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REPORT
No. 97-794

TECHNICAL CORRECTIONS ACT OF 1982

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 6056

[Including cost estimate of the Congressional Budget Office]

SEPTEMBER 8, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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TECHNICAL CORRECTIONS ACT OF 1982

SEPTEMBER 8, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 6056]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6056) to make technical corrections relating to the Economic Recovery Tax Act of 1981, the Crude Oil Windfall Profit Tax Act of 1980, and the Installment Sales Revision Act of 1980, having considered the same, reports favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are shown in the reported bill, with the matter proposed to be stricken in linetype and the matter proposed to be inserted shown in italic type.

I. SUMMARY

In general, the bill contains technical, clerical, conforming, and clarifying amendments to provisions enacted by the Economic Recovery Tax Act of 1981 and certain other 1980 tax legislation. These amendments were developed as a result of a review of the application of the tax law changes made by the tax legislation, taking into account comments submitted to the committee from the Treasury Department, the Internal Revenue Service, the staff, tax practitioners, and others from the public. In addition to written statements submitted to the committee, the committee received public testimony on April 27, 1982, on H.R. 6056 as introduced. The committee approved several amendments on May 11, 1982, as a result of the testimony and comments received.

The bill is divided into three general titles. The first title covers technical, clerical, and conforming amendments to the Economic Recovery Tax Act of 1981 (secs. 101–108). The second title covers amendments to the Crude Oil Windfall Profit Tax Act of 1980 (secs. 201–203), and the third title covers amendments to the Installment

Sales Revision Act of 1980 and certain other 1980 tax legislation (secs. 301–306).

All amendments made by the bill are meant to carry out the intent of Congress in enacting the original legislation. Therefore, the "Explanation of provision" sections of the report contains no separate "Reasons for change" for each individual amendment.

II. GENERAL EXPLANATION OF PROVISIONS

TITLE I.—TECHNICAL AMENDMENTS TO THE ECONOMIC RECOVERY TAX ACT OF 1981

A. Amendments Relating to Individual Income Tax Provisions

1. Individual rate cuts (sec. 101(a) of the bill and secs. 21 and 6428 of the Code)

Present law

ERTA[1] reduced individual income tax rates in several stages, for a total reduction of approximately 23 percent. For 1981, the rates were reduced 1¼ percent. The 1981 reduction was achieved by the use of a credit, rather than a reduction in the rate schedules. The individual rate changes made by ERTA are not prorated in the case of fiscal year taxpayers.

Explanation of provision

The bill clarifies that fiscal-year individuals and other non-corporate fiscal-year taxpayers will use the 1981 rate schedules for fiscal year 1981–1982 (i.e., they will not prorate with the 1982 rate schedules). They will be entitled to the 1¼ percent credit on their tax liability for their 1981–1982 fiscal year.[2]

The bill also clarifies that the 1¼ percent credit for 1981 is not available to reduce the portion of an individual's tax determined under the 50-percent maximum rate for personal service income (sec. 1348) or the special 20-percent capital gains rate for post-June 9, 1981, gains, but is available to reduce the tax on lump-sum distributions under sec. 402(e).

Also, the bill correct certain 50-cent rounding errors in the tax schedules for married taxpayers filing separate returns, estates, and trusts. Thus, for example, the tax on a married person filing a separate return using the rate schedule will be exactly one-half the amount which would be computed under the married filing joint return schedule if such person's taxable income were multiplied by two. The tax on an estate or trust will be the same as if the estate or trust were a married individual filing a separate return using the rate schedule and such estate or trust's taxable income were increased by $1,700 (the zero bracket amount for a married individual filing a separate return).

Effective date

The provisions are effective as if originally included in ERTA.

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[1] The Economic Recovery Tax Act of 1981 (P.L. 97–34).

[2] Treasury regulations allow a taxpayer to change to a calendar year accounting period in order to benefit from the lower tax rates adopted by ERTA. Reg. § 5c. 442–1.

2. Foreign earned income exclusion (sec. 101(c) of the bill and sec. 911 of the Code)

Present law

ERTA replaced the system of deductions and exclusions for the excess costs of living abroad with an exclusion for income earned abroad of up to $75,000 in 1982, increasing in annual increments of $5,000 up to $95,000 in 1986 and later years. In addition, an exclusion or deduction for certain foreign housing costs is provided.

Explanation of provision

The bill clarifies that the amount of the foreign earned income exclusion (including the exclusion for housing) plus the deduction for housing expenses cannot exceed the taxpayer's foreign earned income for the year.

Effective date

The provision applies to taxable years beginning after December 31, 1981.

3. Gain on sale of residence (sec. 101(d) of the bill and sec. 1034 of the Code)

Present law

Gain on the sale of a taxpayer's principal residence may be "rolled over" tax-free if a new principal residence is purchased within the replacement period. ERTA extended the replacement period from 18 months to 2 years. In addition, only one tax-free rollover is allowed every two years; this period also was increased from 18 months by ERTA. The effective date of this provision was generally for sales made after July 20, 1981. However, the changes were also effective for sales made on or before July 20, 1981, if the prior law 18-month rollover period had not expired by July 20, 1981. The result of these changes could deny tax-free rollover treatment in certain situations involving two sales more than 18 months, but less than two years, apart.

Explanation of provision

Under the bill, a taxpayer selling a principal residence before August 14, 1981, may elect not to have the rollover amendments made by ERTA apply to the sale. This will protect a taxpayer who had previously sold a residence within two years from losing any otherwise applicable tax-free rollover benefit.

Effective date

The provision applies to old residences sold or exchanged on or before August 13, 1981.

4. Dependent care assistance exclusion (sec. 101(e) of the bill and sec. 129 of the Code)

Present law

ERTA provided an exclusion from an employee's gross income (within certain limits) for amounts paid or incurred by an employer for dependent care assistance provided to an employee under a dependent care assistance program which meets certain conditions.

Explanation of provision

The bill provides that in order to be qualified, a dependent care assistance program cannot provide benefits that discriminate in favor of officers, owners, or highly compensated employees, or their dependents.

Also, the bill clarifies that an employer is not disallowed a tax deduction for amounts employees exclude from income.[3]

Effective date

The provision applies to taxable years beginning after December 31, 1981.

5. Adoption expenses (sec. 101(f) of the bill and sec. 222 of the Code)

Present law

ERTA provided a new itemized deduction (up to $1,500) for qualified adoption expenses paid or incurred to adopt a child with special needs.

Explanation of provision

The bill clarifies that the deduction is available for the adoption of a child who the State determines is a child with special needs, as defined for purposes of the Social Security Act adoption assistance program. This is a child who the State determines cannot or should not be returned to his or her parent's home, who has a specific factor or condition which makes the child difficult to place, and who has been the subject of an unsuccessful placement effort.

Effective date

The provision applies to taxable years beginning after December 31, 1980.

6. Clerical amendments to the individual income tax provisions

a. A reference in section 402(e) to the zero bracket amount is corrected.

b. Code section 483(g)(4) is amended by correcting a reference to paragraph (g)(1).

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[3] Sec. 127 (relating to educational assistance programs) contains a rule disallowing deductions and credits for amounts excluded from income. The IRS has issued proposed regulations interpreting that rule as not applying to the employer.

B. Amendments Relating to Business Incentive Provisions

1. Accelerated cost recovery system (sec. 102(a) of the bill and secs. 168, 751, and 1250 of the Code)

Present law

ERTA replaced the prior law depreciation system with a new mandatory cost recovery system under which eligible property is recovered over a period of 3, 5, 10, or 15 years. Longer periods may be elected.

Explanation of provision

The bill makes a number of clarifying amendments to the ACRS provisions.

The bill clarifies that recovery allowances for 15-year real property for the year the property is placed in service or disposed of will be based on the number of months the property is in service during the year regardless of the length of the taxpayer's taxable year, and regardless of the recovery period and method used by the taxpayer.

The bill allows the Treasury Department to prescribe rules relating to the treatment of recovery allowances where property is transferred in certain related party transfers, sale-leasebacks, and tax-free transfers (to which sec. 168(f)(10) applies).

The bill allows the Treasury Department to prescribe rules to determine recovery allowances where the use of the property changes, such as from domestic use to foreign use.

The bill clarifies that qualified coal utilization property in the 10-year recovery class means only property which otherwise would be 15-year public utility property.

The bill clarifies that a partner's gain on a sale of a partnership interest will be ordinary income to the extent that the partnership would have realized ordinary income if it disposed of its "section 1245 recovery property" in the year the partner sold its interest.

The bill clarifies that straight-line depreciation, for purposes of determining recapture under section 1250 on 15-year real property, will be based on straight-line depreciation over the recovery period used by the taxpayer with respect to the particular property.

The bill also provides that a building, and its structural components, shall not be treated as 10-year property by reason of a change in use after the property was originally placed in service (by any person). Thus, a building which is converted to a theme-park structure will remain 15-year property, and may be eligible for the rehabilitation credit.

Effective date

The provision applies to recovery property placed in service after December 31, 1980.

2. Minimum tax preferences (sec. 102(b) of the bill and secs. 57–58 of the Code)

Present law

Under ERTA, as under prior law, accelerated recovery on personal property leased by individuals and accelerated recovery on real estate are items of tax preferences for purposes of the minimum tax (and for 1981, the maximum tax on personal service income.)

Explanation of provision

The bill clarifies that the tax preference for accelerated recovery deductions on real estate continues to apply to corporations (including REITs) as under prior law. The bill also clarifies that accelerated deductions for 5-year amortization of low-income housing (under sec. 167(k)) remain a tax preference.

The bill clarifies that the minimum tax is inapplicable where property is recovered over a period longer than the period prescribed under the minimum tax provisions.

Effective date

The provision applies to recovery property placed in service after December 31, 1980.

3. Carryovers (sec. 102(d) of the bill and sec. 172 of the Code)

Present law

Generally, ERTA extended the carryover period for net operating loss carryovers and credit carryovers to 15 years.

Explanation of provision

The bill clarifies that the NOL carryover period for all unexpired NOL carryovers to 1981 of former REITs would be 15 years.

The bill clarifies that NOL or credit carryovers which expired prior to 1981 are not revived by ERTA.

Effective date

The provision applies to carryovers to taxable years ending after December 31, 1980.

4. Investment tax credit (section 102(e) of the bill and secs. 46–48 of the Code)

Present law

Under ERTA, three-year class property is eligible for a 6-percent investment tax credit, and other property is eligible for a 10-percent credit. Additional credits continue to apply to energy property, and additional credits were made applicable to certain rehabilitation expenditures for buildings. ERTA also extended the investment tax credits to certain storage facilities used in connection with the distribution of petroleum products.

Explanation of provision

The bill clarifies that eligible 15-year real property, such as elevators and escalators, is entitled to full investment credits.

The bill clarifies that a building or structural component (such as a warehouse) used as a storage facility in connection with the distribution of petroleum products is not eligible for the investment credit, is treated as 15-year real property under ACRS, and is not automatically subject to section 1245 recapture.

Effective date

The provision applies to recovery property placed in service after December 31, 1980.

5. Rehabilitation expenditures (sec. 102(f) of the bill and secs. 46(a) and 48(g) of the Code)

Present law

ERTA provided a 15-percent investment tax credit for the rehabilitation of qualified nonresidential buildings at least 30 years old, a 20-percent credit for qualified nonresidential buildings at least 40 years old, and a 25-percent credit for certified historic buildings. A qualified rehabilitated building is a building which was placed in service before the beginning of rehabilitation and which retains 75 percent or more of the existing external walls as such following completion of rehabilitation.

The credits are available only if the rehabilitations are "substantial," (e.g., the rehabilitation costs during a prescribed period exceed the greater of $5,000 or the adjusted basis of the building). The 15-percent and 20-percent credits require an adjustment to the building's basis; the 25-percent credit does not. Under subsequent legislation (Tax Equity and Fiscal Responsibility Act of 1982), however, taxpayers will be required to reduce the basis of a certified historic structure by 50 percent of the rehabilitation credit, generally for property placed in service after December 31, 1982.

To obtain the credit under ERTA, the taxpayer must elect the straight-line method for the rehabilitated portion of the building. To elect straight-line for improvements under ACRS, the taxpayer must have elected straight-line for the building shell, unless the rehabilitation occurs more than 3 years after the property is placed in service by the taxpayer.

The provision (sec. 191) previously permitting 5-year amortization of the costs of rehabilitating certified historic structures was repealed.

Explanation of provision

The bill clarifies that a building on which a rehabilitation began before 1982 and which is not eligible for the new investment credit will not lose its eligibility for 5-year amortization (under sec. 191), whether or not the rehabilitation was eligible for the prior law investment credit.

The bill clarifies that the end of the 24-month period (or 60-month period, in the case of certain phased projects) with respect to which the substantiality of a rehabilitation project is measured may be set at any time during the taxable year the rehabilitation is completed, rather than only on the last day of the taxable year.

The bill clarifies that a basis adjustment for any allowable investment credit would be required for certain rehabilitations regardless of whether the credit is used or carried forward.

The bill clarifies that taxpayers may elect the straight-line method for the building shell at any time within 3 years after the shell is placed in service by the taxpayer. This will enable taxpayers to elect the straight-line method for the rehabilitated portion of the building, and thus claim the credit. Such an election will require retroative adjustments in the cost recovery allowances previously claimed by the taxpayer on the building.

The bill clarifies that only a qualified rehabilitated building is eligible for any of the rehabilitation credits.

The bill clarifies that the basis of land is not taken into account in measuring whether a rehabilitation is substantial.

Effective date

The provision applies to expenditures incurred after December 31, 1981.

6. Investment tax credit for used property (sec. 102(g) of the bill and sec. 48(c) of the Code)

Present law

ERTA increased the used property limitation from $100,000 to $150,000 ($125,000 in taxable years beginning in 1981, 1982, 1983, and 1984).

Explanation of provision

The bill clarifies that the increased used property limitation for the investment credit applies only to taxable years beginning after 1980.

Effective date

The provision applies to taxable years beginning after December 31, 1980.

7. Credit for increasing research expenditures (sec. 102(h) of the bill and sec. 44F of the Code)

Present law

ERTA added a 25-percent income tax credit based on the amount by which a taxpayer's qualified research expenditures for the taxable year exceed the average qualified research expenditures in a base period (generally, the preceding three taxable years). Qualified research expenses include "in-house research expenses" and "contract research expenses". The first category consists of amounts paid or incurred for certain research wages, research supplies, or the right to use personal property in research.

Explanation of provision

The bill provides that in-house research expenses do not include amounts paid or incurred after March 31, 1982, for the right to use personal property in research, to the extent the taxpayer receives or accrues payments as the lessor of substantially identical personal property.

The bill adds the research credit to the list of income tax credits which may be reduced under Code section 108(b)(2) when a taxpayer has income from discharge of indebtedness excluded from gross income by reason of bankruptcy or insolvency.

Effective date

The provision applicable to leases applies to amounts paid or incurred after March 31, 1982.

The provision relating to section 108 applies to credits earned after June 30, 1981.

8. Qualified subchapter S trusts (sec. 102(i) of the bill and sec. 1371(g) of the Code)

Present law

The provisions of subchapter S allow certain closely held corporations to have their income and losses taxed directly to the shareholders. Prior to ERTA, trusts other than grantor trusts, voting trusts, and certain testamentary trusts could not be shareholders in a subchapter S corporation. ERTA amended the code to allow certain trusts which distribute all their income currently to the sole income beneficiary to be a shareholder in a subchapter S corporation.

Explanation of provision

The provision clarifies that a trust required to distribute all its income currently to a sole income beneficiary (i.e., a "simple" trust), as well as a trust which actually does distribute all its income currently to a sole income beneficiary, may qualify to be a shareholder in a subchapter S corporation. Also, the bill clarifies that the distribution requirement applies with respect to income within the meaning of section 643(b), i.e., the local law definition of income.

The bill adds a cross-reference in section 678 to the qualified subchapter S trust provisions.

Effective date

The provisions apply to taxable years beginning after December 31, 1981.

9. Incentive stock options (sec. 102(j) of the bill and sec. 422A of the Code)

Present law

ERTA added provisions to allow all income with respect to certain employee stock options ("incentive stock options") to be taxed at capital gains rates when the stock received on the exercise of the option is sold. The amount of stock with respect to which incentive stock options may be granted in any year after 1980 is limited to $100,000 (determined at the time of grant) plus a partial carryover of any previously unused amount.

Explanation of provision

The bill clarifies that if the option stock is sold or exchanged in a recognition transaction prior to the end of the required holding period (two years from the grant of the option and one year from the exercise of the option) where the amount realized is less than the value at exercise, the amount of ordinary income to be recognized is limited to the excess of the amount realized over the adjusted basis of the stock.

The bill clarifies that the dollar limit (under sec. 422A(b)(8)) with respect to options which may be granted in any year applies only to incentive stock options and that the limit is not affected by nonqualified options.

The bill allows a good faith valuation to be used in applying the maximum dollar limit and the carryover of any unused limit, under regulations prescribed by the Treasury.

The bill provides that an employee's transfer of stock acquired pursuant to the exercise of a statutory stock option to acquire other stock in connection with the exercise of an incentive stock option will be treated as a recognition transaction if the transferred stock has not met the minimum statutory holding period to receive special tax treatment (under sec. 421(a)). Thus, such a disposition will result in ordinary income treatment (under section 421(b)) with respect to the stock disposed of, but will not affect the favorable tax treatment for the stock received.

Effective date

The provisions generally apply with respect to incentive stock options granted on or after January 1, 1976, and exercised after 1980.

The provision relating to taxable dispositions applies to dispositions made after March 15, 1982.

10. Restricted property (sec. 101(k) of the bill and sec. 83(c) of the Code)

Present law

ERTA provided that if stock received by a taxpayer is subject to the "insider" trading restrictions of section 16(b) of the Securities Exchange Act of 1934, the time the income with respect to that stock is taken into account under section 83 is postponed.

Explanation of provision

The bill clarifies that the new rules apply to transfers after December 31, 1981, without regard to the recipient's taxable year.

The bill corrects the name of the Securities Exchange Act of 1934 as referred to in the Code.

Effective date

The provision applies to transfers after December 31, 1981.

11. Targeted jobs credit (sec. 102(l) of the bill and sec. 51 of the Code)

Present law

ERTA extended the targeted jobs credit through 1982, revised the definition of certain eligible target groups, changed the certification rules, and made other technical changes.

Explanation of provision

The bill clarifies that wages paid to cooperative education students will continue to be eligible wages even if the income of the student's family increased after the initial determination that the family was economically disadvantaged.

The bill clarifies that the WIN credit is not available for amounts paid to any employee in taxable years beginning after December 31, 1981.

The bill clarifies that individuals participating in work incentive demonstration programs authorized under P.L. 97-35 could be members of a targeted group.

Effective date

The provision generally applies as if included in ERTA.

12. Increase in deduction for charitable contributions by corporations (sec. 102(m) of the bill and sec. 170 of the Code)

Present law

ERTA increased the charitable deduction limit for corporations from 5 percent to 10 percent of the corporation's taxable income (computed with certain adjustments).

Explanation of provision

The bill conforms several provisions of the Code, including provisions relating to insurance companies and tax-exempt organizations, to reflect the limit increase from 5 percent to 10 percent made by ERTA.

Effective date

The provision applies to taxable years beginning after December 31, 1981.

13. Motor carrier operating authorities (sec. 102(n) of the bill and section 266 of ERTA)

Present law

ERTA allowed taxpayers holding motor carrier operating authorities on July 1, 1980, to deduct the basis of the authorities over a 60-month period.

Explanation of provision

The bill clarifies that motor carrier amortization deductions may carry over in corporate acquisitions to which section 381 applies.

Effective date

The provision would be effective on the date of enactment of the bill.

14. Clerical amendments to the business incentive provisions

a. Code section 1248(c) is amended by correcting a cross reference to section 312(k)(4).

b. A reference in section 207(c)(2) of ERTA is corrected.

c. A cross reference at Code section 425(j) is amended by adding a reference to incentive stock options.

d. The bill corrects a reference in Code section 47 to Code section 46(c)(8)(F).

C. Amendments Relating to Savings Provisions

1. Qualified tax-exempt savings certificates (sec. 103(a) of the bill and sec. 128 of the Code)

Present law

ERTA provides a lifetime exclusion of $1,000 (2,000 in the case of a joint return) of interest earned on qualified tax-exempt savings certificates.

Explanation of provision

The bill clarifies that the special limit (under sec. 128(d)(4)) used to determine the amount of tax-exempt certificates which a credit union may issue is applied by taking into account amounts deposited in credit union share accounts.

The bill also corrects references in sections 584, 643, and 702 to section 128.

Effective date

The provision generally applies to taxable years ending after September 31, 1981.

2. Net interest exclusion (sec. 103(b) of the bill and sec. 128 of the Code)

Present law

ERTA provides an exclusion of 15 percent, up to $3,000, of net interest ($6,000 on a joint return) starting in 1985.

Explanation of provision

The bill clarifies that an individual who does not itemize deductions will not be required to reduce interest income eligible for the net interest exclusion by interest expense, and that a person itemizing deductions will be required to reduce such interest income by no more than the amount of his or her excess itemized deductions. The bill also provides that adjusted gross income will not be reduced by the amount of the net interest exclusion, for the purposes of determining the amount of exclusions, itemized deductions, and credits.

Effective date

The provision applies to taxable years beginning after December 31, 1984.

3. Individual retirement savings (sec. 103(c) of the bill and secs. 72, 219, 402, 403, 2039, and 4972 of the Code)

Present law

ERTA generally allows individuals an annual deduction for contributions to an individual retirement account, annuity, or bond (IRA) limited to the lesser of $2,000 ($2,250 for a spousal IRA) or 100 percent of compensation. In lieu of the deduction for IRA contributions, an employee is allowed a deduction (subject to the IRA limit) for qualified voluntary employee contributions to an employer's retirement plan. Accumulated deductible employee contributions under an employer's plan generally are subject to IRA-type rules.

Explanation of provision

The bill clarifies the rules for spousal IRAs to insure that an employee is not denied a deduction for contributions to an IRA for the benefit of a spouse having no compensation merely because the employee is also allowed a deduction for employer contributions to an IRA which qualifies as a simplified employee pension (SEP). In addition, the bill makes it clear that a deduction is allowable for IRA contributions for the benefit of a spouse who has no compensation and who has not attained age 70½ before the close of the taxable year, even if the spouse having compensation is age 70½ or older.

The bill deletes simplified employee pension from the definition of qualified employer plan. (Except for the limit on contributions, SEPs are generally subject to the tax rules applicable to IRAs).

The bill clarifies the rules allowing a deduction for individual retirement savings by providing that, for a self-employed individual, compensation includes net earnings from self-employment reduced by any amount allowable as a deduction to the individual for contributions made on behalf of the individual to a tax-qualified plan (an "H.R. 10" plan or "Keogh" plan). In addition, the bill clarifies that compensation, for this purpose, does not include pension and annuity payments or other deferred compensation.

The bill clarifies the rule allowing a deduction for certain voluntary employee contributions made to a qualified employer or government plan after the close of the taxable year by providing that such contributions must be made on account of that taxable year.

The bill clarifies that a 10-percent additional income tax is imposed on early withdrawals (generally, before age 59½) of accumulated deductible employee contributions from either the plan to which the contributions were made or from a plan to which the accumulated contributions were rolled over or otherwise transferred.

The bill revises the rules relating to lump-sum distributions and rollover amounts under qualified plans and tax-sheltered annuity programs to clarify that partial (as well as total) distributions of accumulated deductible employee contributions are eligible for tax-free rollover treatment.

The bill clarifies that accumulated deductible employee contributions payable to a beneficiary of a deceased employee under a tax-qualified plan are eligible for the estate tax exclusion only if any lump-sum distribution also payable to the beneficiary under the plan is eligible for the exclusion.

The bill clarifies that an owner-employee (a sole proprietor, or a partner whose partnership interest exceeds 10 percent) is permitted to make deductible employee contributions to a tax-qualified plan (an "H.R. 10" plan or "Keogh" plan) notwithstanding the rules which may preclude nondeductible employee contributions by the owner-employee.

The bill clarifies effective date provisions for the estate and gift tax provisions relating to individual retirement savings.

Effective date

The provisions apply to taxable years beginning after December 31, 1981.

4. Retirement plan deduction for self-employed individuals (sec. 103(d) of the bill and secs. 401 and 408 of the Code)

Present law

ERTA increased from $7,500 to $15,000, the maximum annual deduction limit for employer contributions to defined contribution H.R. 10 plans, defined contribution plans maintained by subchapter S corporations, and simplified employee pensions (SEPs). Conforming changes were made to the limits on benefit accruals in defined benefit H.R. 10 plans. In addition, ERTA permitted a plan to increase from $100,000 to $200,000 the amount of compensation taken into account if the plan provides specified minimum contributions or benefits for common law employees.

Explanation of provision

The bill amends the minimum contribution rule applicable to simplified employee pensions to permit the exclusion of self-employed individuals. This change conforms the minimum contribution rule for SEPs to that for H.R. 10 plans and plans maintained by subchapter S corporations.

The bill increases the limit on contributions to an IRA to which an employer makes contributions under a SEP from $15,000 to $17,000, to allow the IRA to accept employee contributions of $2,000 in addition to employer contributions of $15,000.

The bill clarifies the effective date provision to apply to all plans, whether or not they cover a self-employed individual.

Effective date

The provisions apply to taxable years beginning after December 31, 1981.

5. Public utility dividend reinvestment plans (sec. 103(f) of the bill and sec. 305(e) of the Code)

Present law

ERTA added a provision which allows public utility corporations to set up dividend reinvestment plans under which shareholders electing to receive distributions in the form of common stock, rather than money or other property, may exclude up to $750 per year ($1,500 in the case of a joint return) of the stock distribution from income.

Explanation of provision

The bill clarifies that a corporation is a qualified public utility, if during the 10 years prior to its taxable year in which the distribution is paid, at least 60 percent of the cost of all tangible property described in subparagraphs (A) and (B) of section 1245(a)(3) (i.e., personal property and certain other tangible property) placed in service (whether or not purchased or self-constructed) by the corporation during the 10-year period was qualified long-life public utility property. Qualified long-life public utility property means any tangible property described in subparagraph (A) or (B) of section 1245(a)(3), which has a present class life of more than 18 years and which is public utility property (as defined in section 167(1)(3)(A)). Thus, property excluded from the definition of recovery property under ACRS may nevertheless meet the definition of qualified long-life public utility property.

Effective date

The provision applies to distributions made after 1981 and before 1986.

6. Employee stock ownership plans (secs. 103 (g), (h), and (i) of the bill and secs. 44G, 401, and 409A of the Code)

Present law

Under ERTA, the additional investment tax credit allowed an employer for contributions to an employee stock ownership plan (ESOP) is terminated with respect to qualifying investments made after December 31, 1982. For taxable years ending after that date, an electing employer is allowed an income tax credit for ESOP contributions limited to a prescribed percentage of the aggregate compensation of all employees covered by the plan.

Explanation of provision

The bill adds provisions relating to regulated public utilities which conform the rules for the payroll-based tax credit for ESOP contributions to the rules for the investment-based tax credit for ESOP contributions. These rules limit the normalization requirements to compensation paid which is subject to ratemaking.

The bill clarifies that the tax-qualified status of an ESOP is not affected merely because employer contributions are determined solely by reference to the payroll-based tax credit allowable to the employer for the contributions.

The bill clarifies that certain cash distribution provisions, if provided under a tax credit ESOP of an employer whose stock generally is required to be held only by employees, will not affect the plan's status either under the qualified plan rules or those additional rules applicable to tax credit ESOPs.

The bill clarifies the rules permitting a distribution to a participant under a tax credit ESOP in the event of the participant's transfer from one employer to another incident to a sale of assets by the former employer to the new employer.

Effective date

The provisions generally apply to compensation paid or accrued after December 31, 1982.

7. Clerical amendments to savings provisions

a. A parenthesis is added to Code section 219(b)(2)(A).

b. Code sections 3401(a)(12) and 6047(d) are amended to reference section 219.

c. Subsections (m) and (n) of Code section 408 are redesignated as (l) and (m).

d. The bill deletes a redundant reference in the alternative minimum tax to the ESOP credit.

e. The bill corrects a reference in Code section 402(e)(4)(J) to section 72.

f. The bill corrects a reference in section 331(c)(4) of ERTA.

D. Amendments Relating to Estate and Gift Tax Provisions

1. Unlimited marital deduction (sec. 104(a) of the bill and secs. 1014, 2044, 2056, 2519, and 2523 of the Code)

Present law

ERTA removed the quantitative limits on the marital deduction for both estate and gift tax purposes. Thus, unlimited amounts of property (other than certain terminable interests) may be transferred between spouses without estate or gift tax.

Under the Act, certain transfers of qualified terminable interest property qualify for the marital deduction. If certain conditions are met, a surviving spouse's income interest in qualified terminable interest property is not treated as a terminable interest. The entire property subject to such interest is treated as passing to the spouse and no interest in such property is considered to pass to any other person. Accordingly, the entire property qualifies for a marital deduction.

The Act also provided that the entire value of property subject to an election to be treated as a qualified terminable interest will be subject to transfer taxes at the earlier of (1) the date on which the donee spouse disposes (either by gift, sale, or otherwise) of all, or any part of the qualifying income interest or (2) upon the donee spouse's death.

In addition, in the case of property that is owned by the decendent and included in the decedent's gross estate for estate tax purposes, the basis of that property in the hands of the estate, heir, or other recipient of the property generally is "stepped up" to its fair market value on the date of the decedent's death (or alternative valuation date if that date is elected for estate tax purposes).

Explanation of provisions

The bill clarifies that qualified terminable interest property ("QTIP property") included in the estate of a deceased donee-spouse (under sec. 2044) is eligible for a "step-up" in basis.

The bill clarifies that QTIP property included in a deceased donee spouse's estate is treated as passing from that spouse, for purposes of the estate tax, including the charitable and marital deductions. In the case of a transfer to a pooled income fund (as defined in section 642(c)(5)) in which the spouse of the transferor is the sole life beneficiary of certain units of participation in the fund, a marital deduction may be allowed for the entire value of the transfer with respect to such units if the property qualifies as QTIP property and the election is made. In determining whether such property qualifies as QTIP property, the fact that the income payments terminate on the last required regular payment date before the death of the beneficiary spouse, shall not cause the spouse's interest to fail to be a qualified income interest.

The bill clarifies that the special rule, providing for a constructive gift as a result of a lifetime transfer by the donee spouse of an income interest in QTIP property, applies only to the remainder interest in QTIP property. The tax treatment of the life estate in QTIP property is governed by the rules generally applicable to any life estate held by the surviving spouse.

The bill clarifies that the lifetime QTIP election must be made no later than April 15 of the calendar year following the year the gift is made (i.e., the due date of the annual gift tax return).

The bill clarifies that a transfer by the donor spouse of any retained interest in QTIP property after the transfer of the life interest to the donee spouse is not treated as a transfer for estate and gift tax purposes. This rule will not apply after the earlier of a subsequent disposition by the donee spouse or the death of the donee spouse.

The bill clarifies that an annuity does not qualify as a qualifying income interest.

Effective date

The provisions apply with respect to estates of decedents dying after December 31, 1981, and gifts made after that date.

2. Current use valuation (sec. 104(b) of the bill and sec. 2032A of the Code)

Present law

In general

If certain requirements are satisfied, an executor of an estate comprised largely of real property used in farming or other closely held businesses may elect to value the property at its current use value, rather than at its full fair market value. If, within a prescribed period after the death of the decedent (and before the death of the qualified heir), specially valued property is disposed of to nonfamily members or ceases to be used for the farming or other closely held business purpose on the basis of which it was valued in the decedent's estate, all, or a portion of, the Federal estate tax benefits obtained by virtue of the reduced valuation are recaptured by means of a special "additional estate tax" or "recapture tax" imposed on the qualified heir.

Material participation

The provision, as amended by ERTA, requires that the decedent or a member of the decedent's family materially participate in the business operation for periods aggregating five years of the eight-year period ending on the earliest of (1) the decedent's death, (2) the beginning of continuous disability lasting until death, or (3) retirement lasting until death, if the estate is to receive the benefits of current use valuation. ERTA also amended the provision to deem the material participation requirement to be satisfied for specially valuing property in the estate of a surviving spouse of a decedent whose estate was eligible to value the property based upon its current use if the spouse engages in "active management" of the business operation. Active management means the making of business decisions other than daily operating decisions, and requires a lesser standard of involvement than material participation.

Retroactive application

Four changes made by ERTA apply retroactively to certain estates of decedents dying after December 31, 1976, as well as prospectively.

These four changes apply retroactively to (1) estates of decedents for which the estate tax return was due and timely filed on or before July 28, 1980 (the date on which the final Treasury regulations under section 2032A were adopted), provided that the estate timely elected current use valuation on the decedent's estate tax return (even if the election was subsequently revoked), and (2) estates of decedents for which an estate tax return was due and timely filed after July 27, 1980, whether or not the estate originally elected the current use valuation provision.

Estates which were eligible to reinstate (or make) elections because of these retroactive changes were required to do so on or before the date which was six months after the date of enactment of ERTA.

Explanation of provisions

The bill allows "tacking" of material participation by a retired spouse with active management by the surviving spouse to qualify property for current use valuation in the surviving spouse's estate where the spouse survives the first decedent by fewer than eight years.

The bill clarifies that the only retroactive amendment made by ERTA with respect to the rules on cessation of qualified use is the provision of section 2032A(c)(7)(A) permitting a qualified heir a 2-year grace period to begin using the property in a qualified use. The special rules on active management by certain surviving spouses apply only to estates of decedents dying after December 31, 1981.

The bill clarifies that the period to reinstate (or make) current use valuation elections by reason of the retroactive amendments in no event expired before the close of February 16, 1982.

The bill clarifies that the right to make a late initial election or reinstate a previously revoked or disallowed election is available only if one of ERTA's four retroactive amendments applies to the estate.

The bill clarifies that recapture on certain tax-free exchanges occurs only to the extent nonqualified replacement property is received.

The bill provides that, if specially valued property is acquired in a transaction to which section 1040 applies (i.e., in satisfaction of a pecuniary bequest or by purchase from the decedent's estate) and is then sold to another qualified heir within one year of the decedent's death, the property will meet the holding period for long-term capital gain treatment.

Effective date

The provisions apply as if they had been included in the amendments to the current use valuation provision made by ERTA.

3. Installament payment of estate tax (sec. 104(c) of the bill and sec. 6166 of the Code)

Present law

ERTA combined the prior Code provisions which permitted an estate to make installment payments of estate taxes attributable to interests in a closely held business into a single provision (sec. 6166). Under the Act, if the value of an interest in a closely held business exceeds 35 percent of the value of the adjusted gross estate, the estate tax attributable to the value of that interest may be paid in installments for up to 14 years. Unpaid installments are accelerated if certain dispositions of, or withdrawals of funds from, the business occur.

Explanation of provision

The bill corrects an erroneous reference to the percentage requirement of section 6166 and makes conforming amendments relating to the relationships between acceleration of the tax and section 303 redemptions. The bill clarifies that stock redeemed under section 303 shall not be taken into account in measuring whether an acceleration of payment is required as a result of funds being withdrawn from the business or stock having been disposed of.

Effective date

The provision applies to estates of decedents dying after December 31, 1981.

4. Transfers made within three years of death (sec. 104(d) of the bill and sec. 2035 of the Code)

Present law

Prior to ERTA, gifts made by the decedent within 3 years of death generally were includible in the decedent's gross estate (sec. 2035(a)). ERTA provided, generally, that gifts made by the decedent prior to death are not included in the decedent's gross estate. However, the Act contained exceptions which continue the application of the three-year rule to interests in property included in the value of the gross estate pursuant to section 2036, 2037, 2038, 2041 or 2042.

The Act also included transfers made within three years of death in the estate for purposes of determining eligibility for special redemptions (sec. 303), valuation (sec. 2032A), and installment payment purposes (sec. 6166).

Explanation of provision

The bill clarifies that the special 3-year rule applies for purposes of section 6166 only to determine eligibility for the installment payment provision. Under the bill, an estate will be treated as meeting the 35 percent of adjusted gross estate test of section 6166 only if the estate meets the test both with and without the application of the three-year inclusion rule of section 2035a).

The bill applies the 3-year inclusion rule to interests which would have been includible in the decedent's estate under section 2036, 2037, or 2038, whether or not a gift tax return was required with respect to the transfer.

The bill makes the 3-year rule inapplicable to exercises of general powers of appointment.

The bill allows the executor of a decedent's estate to make an irrevocable election to have the estate and gift tax amendments made by ERTA not apply in any case where the decedent made a gift before August 13, 1981, and within 3 years of death, on which a gift tax had been paid before April 16, 1982.

Effective date

The provision applies to estates of decedents dying after December 31, 1981.

5. Clerical amendments to the estate and gift tax provisions

a. The bill provides that the amendments made by ERTA section 403(d)(3)(B) are amendments to chapter 12 of the Code.

b. Code section 2523(f) is amended to refer to "rules similar to" certain rules.

c. A cross reference to Code section 2207(A) is added to section 2519.

d. A reference in Code section 2035(b) to section 6019(2) is corrected.

e. A reference in Code section 2032A(i) to a nonexistent paragraph is deleted.

f. Code section 1040 is amended by inserting "transfer" for "exchange".

g. Code section 2518(c)(3) is amended by deleting redundant language.

E. Amendments Relating to Tax Straddle Provisions

1. Postponement of recognition of certain straddle losses (sec. 105(a) of the bill and sec. 1092 of the Code)

Present law

ERTA requires the deferral of losses from positions constituting part of a straddle where there are unrealized gains on offsetting positions (sec. 1092(a)(1)). Unrealized gains on offsetting positions are defined as gains which would be taken into account if the positions were sold on the last day of the taxable year at their fair market value (sec. 1092(a)(3)(A)). Under tax accounting rules, gains from sales of property by a taxpayer on the cash method of accounting are not taken into account until the sale proceeds are actually or constructively received. In the case of year-end sales, consummation of the sales contract and receipt of the sales proceeds may not take place until the following year. Losses, however, are generally taken into account for tax purposes on the date the sales contract is executed. Prior to ERTA, these tax accounting rules permitted losses to be taken into account in one year and offsetting gains to be deferred into the following year in some cases. ERTA was intended to preclude this possibility.

Explanation of provision

The bill clarifies that the loss deferral rules of section 1092 will apply where there is unrecognized gain on offsetting positions, whether or not the gain is realized.

The bill deletes certain language of sections 1092(a)(1)(A) and 1092(d)(4) as redundant.

Effective date

The provision generally applies to property acquired after June 23, 1981.

2. Regulated futures contracts (sec. 105(b) of the bill and sec. 1256 of the Code)

Present law

In general.—ERTA adopted the marked to market system of domestic exchanges to determine the tax consequences of holding regulated futures contracts (sec. 1256). Gains and losses reflected in such contracts held by the taxpayer at the close of his or her taxable year and which constitute capital assets are treated as short-term gain or loss to the extent of 40 percent of gains and losses and as long-term gain or loss to the extent of 60 percent of gains and losses. Section 1256(c) requires gains and losses to be taken into account at other relevant dates during the taxable year, such as the date a contract is closed by making or taking delivery under a regulated futures contract.

Holding period.—Section 1223(8) includes the period a commodity futures contract was held in determining the holding period of a commodity acquired by performance of the contract. Prior to ERTA, taking delivery under a futures contract was not a taxable event.

Mixed straddles.—Mixed straddles are straddles composed in part of regulated futures contracts and in part of other positions. Taxpayers may elect, under section 1256(d), to exclude the regulated futures contracts forming part of such straddles from the treatment provided by section 1256. Each position forming part of such a straddle must be identified as being part of such straddle before the close of the day on which it is acquired. If the regulated futures contract is acquired and identified before other positions included in such a straddle, failure to identify the subsequently acquired positions results in a failure to satisfy the definition of a mixed straddle in section 1256(d)(4).

Cash settlement contracts.—Regulated futures contracts the tax treatment of which is governed by section 1256 are defined to include only contracts that require the delivery of personal property (as defined in sec. 1092(d)(1)). Since the enactment of ERTA, the Commodity Futures Trading Commission has authorized trading in several market-to-market future contracts that call for cash settlement only and do not require the delivery of personal property.

Foreign currency contracts.—Trading in foreign currency for future delivery is conducted through regulated futures contracts, and is also conducted through contracts negotiated with any one of a number of commercial banks which comprise an informal market for such trading (bank forward contracts). Bank forward contracts differ from regulated futures contracts in that they are private contracts in which the parties remain entitled to performance from each other. They further differ from regulated futures contracts in that they do not call for daily variation margin to reflect market changes, and in that the interbank market has no mechanism for settlement terminating a taxpayer's position prior to the delivery date. Prior to ERTA, taxpayers who used both the futures exchanges and the interbank market to conduct short-term trading in foreign currency were subject to substantially comparable tax treatment for both types of contract. Although bank forward contracts differ from regulated futures contracts, the volume of trading through forward contracts in foreign currency in the interbank market is substantially greater than foreign currency trading on futures exchanges, and prices are readily available. Such contracts are economically comparable to regulated futures contracts in the same currencies and are used interchangeably with regulated futures contracts by traders.

Syndicates.—Hedging transactions are excepted from the marked to market treatment of section 1256(a), as well as the rules of section 1092 and section 263(g). Certain syndicates, losses from which flow to limited partners or limited entrepreneurs, are excluded from the hedging exception (sec. 1256(e)(3)). The Treasury is authorized to determine that certain interests will not be treated as limited interests under these rules where it determines that an interest is held by an individual actively participating in management and where neither such interest nor the entity are used for tax-avoidance purposes. It is not clear whether this authority may be exercised through the promulgation of regulations or must be exercised on a case-by-case basis.

Explanation of provisions

Under the bill, the termination rules of section 1256(c) are amended in two respects. The bill requires that gains and losses be taken into account when a taxpayer's rights in a regulated futures contract are transferred by the taxpayer.[4] The bill also requires, if a straddle includes two or more regulated futures contracts, that all the contracts will be treated as terminated on the date the taxpayer takes delivery under any of such contracts. Thus section 1256(a) will apply when transfers of regulated futures contracts are made to and from partnerships and other flow-through entities, and to all regulated futures contracts constituting part or all of a straddle when the taxpayer takes delivery under any of such contracts.

The bill clarifies that the holding period rule of section 1223(8) will be inapplicable to commodities acquired through satisfaction of a regulated futures contract to which section 1256 applies.

The bill amends section 1256(d)(4) defining mixed straddles to require identification of all positions constituting such straddle not later than the close of the day on which the first regulated futures contract forming part of the straddle is acquired. This amendment clarifies that an election as to whether section 1256 will apply to a regulated futures contract included in a mixed straddle may not be deferred beyond the date that contract is acquired. For this purpose, when a short regulated futures contract is treated as terminated on the date the taxpayer takes delivery under a long regulated futures contract (under the straddle amendment to section 1256(c)), the short position will be treated as a new regulated futures contract acquired on that date.

The bill deletes the provision that a contract must require the delivery of personal property to be considered a regulated futures contract. Cash settlement contracts otherwise satisfying the definition of a regulated futures contract will be subject to the rules of section 1256 under the bill.

The bill treats certain foreign currency contracts as regulated futures contracts. Foreign currency contracts mean contracts traded through the interbank market that involve currencies which are also traded through regulated futures contracts. The Secretary of the Treasury is authorized to prescribe rules to determine the fair market value of any such foreign currency contract. For this purpose, any terms in a contract which preclude the determination of a readily ascertainable valuation may be disregarded.

Finally, the bill provides expressly that the Treasury may prescribe regulations to determine that interests will not be treated as held by limited partners or limited entrepreneurs in applying the syndicate rule.

Effective date

The provision generally applies to property acquired after June 23, 1981. However, the amendment relating to bank forward contracts in certain foreign currencies applies to contracts entered into after May 11, 1982.

3. Clerical amendment to straddle provisions

a. Code section 6653(g) is redesignated as section 6653(f).

b. A reference in code section 1092(c)(2) to subsection (a)(2)(B) is corrected.

c. Section 509(b)(3) of ERTA is clarified.

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[4] This rule does not apply to the transfer of contracts of third party taxpayers between commission merchants.

F. Amendments to Energy Provisions

1. Stripper oil (sec. 106(b) of the bill and sec. 4994 of the Code)

Present law

Under present law, exempt stripper well oil is oil which is produced by an independent producer from a stripper well property and which is attributable to an independent producer's working interest in the stripper well property. Exempt stripper well oil is exempt from the windfall profit tax. Under a limitation on certain transferred properties, the category of exempt stripper well oil does not include any oil attributable to an interest in property owned by a person other than an independent producer at any time after July 22, 1981.

Although this limitation was intended to reach only property interests transferred after July 22, 1981, a literal reading of the provision would disqualify as exempt stripper well oil any oil allocable to an interest in property which was owned, at any time after July 22, 1981, by a producer other than an independent producer, whether or not the interest was ever actually transferred.

Explanation of provision

The bill provides that, in determining whether a property interest was owned by a person other than an independent producer at any time after July 22, 1981, the current producer will not be considered. Thus, if the current producer of oil otherwise qualifying as exempt stripper well oil ceased to qualify as an independent producer, its production would not be eligible for the exemption for such quarter or quarters that the producer doesn't qualify as an independent producer. However, if the producer later returned to independent producer status, its otherwise qualified production could then again qualify for the exemption. If the property interest were later transferred, production from the transferred property could not qualify for the exemption even if the transferee were an independent producer because the property would have been owned by a person (other than the producer) who at some time after July 22, 1981, was not an independent producer.

Effective date

The provision applies to oil removed after December 31, 1982.

2. Clerical amendments to the energy provisions

a. Code section 6429(d)(3) is amended by striking out subparagraph (D).

b. A reference in Code section 4994(f)(3)(B) is corrected.

c. The definition of "qualified family farm corporation" in section 4994(d)(4)(B) is corrected.

G. Amendments Relating to Administrative Provisions

1. Penalty for valuation overstatements (sec. 107(a) of the bill and sec. 6659 of the Code)

Present law

ERTA added a valuation overstatement penalty that applies if the value of any property, or the adjusted basis of any property, claimed on a return exceeds 150 percent of the amount determined to be the correct valuation or basis. A $1,000 de minimis exception applies.

Explanation of provision

The bill clarifies that the $1,000 de minimis exception to the valuation overstatement penalty applies to the aggregate of all overstatements of the taxpayer for the taxable year. Also, a clarification is made that the penalty applies where the stated value is exactly 150 percent of the actual value.

Effective date

The provision applies with respect to returns filed after December 31, 1981.

2. Negligence penalty (sec. 107(a)(3) of the bill and sec. 6653 of the Code)

Present law

ERTA imposed an additional negligence penalty equal to 50 percent of the interest with respect to that portion of an underpayment which is attributable to negligence or intentional disregard for rules or regulations. The penalty is applied for the period beginning with the due date (without extensions) of the return and ending on the date of assessment of the tax.

Explanation of Provision

The bill clarifies that the penalty will not apply for any period after the date payment is made (even though the tax was not assessed on or before that date).

Effective date

The provision applies to taxes the last date for payment of which is after December 31, 1981.

3. Penalty for overstated tax deposit claims (sec. 107(b)(2) of the bill and sec. 6656 of the Code)

Present law

ERTA provided a civil penalty applicable to persons who make overstated deposit claims. The penalty is an amount equal to 25 percent of the overstated deposit claim.

Explanation of provision

The provision clarifies that the penalty will not apply with respect to amounts deposited on or before the due date for the deposit return, whether or not the deposit is actually made after the return is filed.

Effective date

The provision applies to returns filed after August 13, 1981.

4. Individual estimated tax payments (sec. 107(c) of the bill and sec. 6654 of the Code)

Present law

ERTA provided that an individual is not subject to a penalty for failure to pay estimated taxes if the tax due is less than $500 (in 1985 and thereafter). (This amount is phased-up in $100 increments beginning with $100 in 1981).

Explanation of provision

The bill clarifies that the estimated tax penalty does not apply if the tax liability reduced by any income tax withheld is less than the specified amounts ($500 in 1985 and thereafter).

Effective date

The provision applies to taxable years beginning after December 31, 1980.

5. Clerical amendments to administrative provisions

a. A reference in Code section 5761 to section 6660 is corrected.

b. A reference to Code section 6015(c) is corrected.

H. Amendments Relating to Miscellaneous Provisions

1. Prepaid legal services (sec. 108(a) of the bill and secs. 120 and 501 of the Code)

Present law

ERTA extended, through 1984, the provisions of prior law allowing an exclusion from income for benefits provided under a qualified group legal services plan which is exempt from income tax under section 501(c)(20).

Explanation of provision

The bill clarifies that the section 501(c)(20) exemption provision, as well as the exclusion provision relating to group legal service plans, will terminate after 1984.

Effective date

The provision is effective on the date of enactment of the bill.

2. Clerical amendment to the miscellaneous provisions

Code section 4942(j)(3)(A)(i) is corrected by inserting "or" for "and".

TITLE II. TECHNICAL AMENDMENTS RELATING TO CRUDE OIL WINDFALL PROFIT TAX OF 1980

1. Computation of net income limitations (sec. 201(a)(2) of the bill and sec. 4988 of the Code)

Present law

Under present law, the windfall profit on any barrel of crude oil cannot exceed 90 percent of the net income attributable to such barrel. In general, in determining the net income attributable to a barrel of crude oil, the taxable income from the property is determined as if intangible drilling and development cost expenditures had been capitalized and as if the producer had used cost depletion for all "taxable periods" during which he owned his economic interest in the property. Under present law, the term "taxable periods" is defined to mean March 1980, and each calendar quarter beginning after March 1980.

The reference to "taxable periods" in the "as if" cost depletion provision was intended to refer to all the taxable years during which the taxpayer had held the property, not just March 1980, and all the calendar quarters thereafter.

Explanation of provision

The bill clarifies the law by inserting "all taxable years" in place of "all taxable periods" in the "as if" cost depletion portion of the net income limitation provision.

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

2. Inflation adjustments (sec. 201(b) of the Bill and sec. 4989 of the Code)

Present law

Under present law, the inflation adjustment for any quarter to the base price of a barrel of crude oil is based on the difference between the GNP implicit price deflator for the second preceding quarter and such deflator for the second quarter of 1979. The second revision of the GNP implicit price deflator is used for this purpose.

Explanation of provision

The bill clarifies that the GNP deflator for the second quarter of 1979 is to be measured using the revision most consistent with the second revision of the GNP deflator for the second quarter preceding the current quarter.

Effective date

This provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

3. Definition of tier 2 oil (sec. 201(c) of the bill and sec. 4991 of the Code)

Present law

Under present law, tier 2 oil includes any oil from an economic interest in a National Petroleum Reserve held by the United States. Tier 2 oil was intended to include oil from an economic interest held by the United States in the Naval Petroleum Reserves at Elk Hills, California; Buena Vista, California; and Teapot Dome, Wyoming.

Explanation of provision

The bill clarifies that oil from an economic interest held by the United States in a Naval Petroleum Reserve is tier 2 oil. Crude oil production from the National Petroleum Reserve at Point Barrow, Alaska is exempt from the windfall profit tax because that reserve is located north of the Arctic Circle.

Effective date

This provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

4. Definition of independent producer (sec. 201(d)(1) of the bill and sec. 4992 of the Code)

Present law

Under present law, an independent producer for windfall profit tax purposes is any person who is not a "refiner" or "retailer." To determine whether a person is a "retailer' or "refiner", the income tax (depletion) definition is applied on a calendar quarter rather than a taxable year basis. Thus, the retailer test is applied by determining whether the gross receipts derived from the sale of oil, natural gas, or any product through all retail outlets of the taxpayer exceed $1,250,000 in the calendar quarter (rather than $5,000,000 in the taxable year). The refiner test is applied by determining whether the taxpayer's refinery runs exceed 50,000 barrels on any day during a calendar quarter (rather than on any day during the taxable year).

Explanation of provision

The bill provides for a calendar year determination, for windfall profit tax purposes, of whether a producer is a retailer or a refiner and, therefore, not an independent producer. Thus, for calendar year taxpayers the determination of independent producer status will be made on the same basis for windfall profit tax and income tax purposes. However, for fiscal year taxpayers, the determination will be made on a calendar year basis for windfall profit tax purposes and a taxable year basis for income tax purposes.

Effective date

The provision would be effective on January 1, 1983.

5. Allocation of independent producer's qualified production (sec. 201(d)(2) of the bill and sec. 4992 of the Code)

Present law

Under present law, if an independent producer's qualified production of oil for any quarter exceeds that person's independent producer amount for that quarter (generally, 1,000 barrels a day), then that person's independent producer amount must be allocated between tiers 1 and 2 in proportion to that person's production for such quarter of domestic crude oil in each tier (and within any tier on the basis of removal price). Generally, qualified production is tier 1 or tier 2 oil which is attributable to the independent producer's working interest in the property.

The effect of this allocation provision is that when there is qualified production in excess of 1,000 barrels a day in any quarter, the 1,000 barrels must be allocated between tier 1 and tier 2 on the basis of the independent producer's total production for that quarter in either such tier, even though some of that person's tier 1 and tier 2 production includes oil which does not qualify as independent producer oil and is not, therefore, entitled to lower rates. This may occur when, for example, an independent producer also has tier 1 or tier 2 oil attributable to a royalty interest.

Explanation of provision

The bill requires that the allocation of qualified production between tier 1 and tier 2, and within any such tier, be based solely on oil which itself is qualified production for any quarter.

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

6. Incremental tertiary project beginning date (sec. 201(e) of the bill and sec. 4993 of the Code)

Present law

Under present law, incremental tertiary oil is treated as tier 3 oil and is, therefore, entitled to a 30-percent windfall profit tax rate. Incremental tertiary oil is the excess of the amount of crude oil produced and removed from a property during a month for which a qualified tertiary recovery project is in effect on the property and on or after the project beginning date (i.e., the later of certification or injection), over the base level of crude oil production from that property during that month. To qualify as a qualified tertiary recovery project, the project must have a beginning date after May, 1979.

Explanation of provision

The bill clarifies that production from a qualified tertiary recovery project is not entitled to tier 3 treatment unless the date on which injection of tertiary injectants begins is after May 1979.

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

7. Exempt Alaskan oil (sec. 201(f) of the bill and sec. 4994(e) of the Code)

Present law

Under present law, exempt Alaskan oil is any crude oil, other than Sadlerochit oil, which is produced (1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or (2) from a well located on the northerly side of the divide of the Alaskan-Aleutian range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System. Sadlerochit oil is crude oil produced from the Sadlerochit reservoir in Prudhoe Bay. The divide of the Alaskan-Aleutian range is that line which divides that area from which water drains into the Bering Sea (the northerly side of the divide), from that area from which water drains into the Gulf of Alaska (the southerly side of the divide).

Explanation of provision

The bill clarifies that exempt Alaskan oil includes all oil produced from a well located north of the Arctic Circle (other than Sadlerochit oil) from a reservoir from which commercial quantities of oil have been produced through such well. The bill also makes a clerical amendment by changing the term "Alaskan-Aleutian range" to "the divides of the Alaskan and Aleutian ranges".

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

8. Withholding adjustments and deemed payment date (sec. 201 (g) of the bill and sec. 4995 of the Code)

Present law

Withholding adjustments

Under present law, one method whereby the windfall profit tax is collected is through withholding by first purchasers of taxable crude oil. If the amount withheld is incorrect, an adjustment of the withholding error may be required.

Generally, the Secretary may require withholding errors to be corrected by the first purchaser through adjustments to amounts withheld from that producer on crude oil purchases during the same calendar year. However, under present law, no withholding adjustment may be required which would result in the first purchaser withholding on any payment an amount in excess of the windfall profit element of that payment or which would result in withholding adjustments being made with respect to one calendar year on payments being made in a subsequent calendar year.

The calendar year and windfall profit element restrictions on required withholding corrections were designed to protect small producers during initial implementation of the windfall profit tax. Many of these small producers are now exempt from the tax.

Deemed payment date

Under present law, the producer is deemed to have paid the amount of tax withheld from him with respect to any calendar year's production on the last day of the first February following the close of that calendar year even though the amount may have been withheld in a previous taxable year.

Explanation of provision

The bill streamlines the withholding adjustment provisions of current law by striking the windfall profit limitation on the amount which may be withheld and by granting the Secretary authority to require adjustments after the close of the calendar year of removal. It is anticipated that the Treasury limits on how long after the original error a correction can be made. Finally, the bill also clarifies that the deemed payment date applies for windfall profit tax and administrative purposes only.

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

9. Net profits interests (sec. 201(h) of the bill and sec. 4996 of the Code)

Present law

Producer

The windfall profit tax is imposed on the removal of taxable crude oil from the premises from which it was produced. Liability for the tax is imposed on the "producer." In general, the producer of crude oil is the person who holds an economic interest in the crude oil. Thus, the producer who is liable for the windfall profit tax generally is the same person who is, under the income tax laws, entitled to the allowance for depletion with respect to the crude oil produced.

One of the forms of ownership which may give rise to an economic interest in crude oil is a net profits interest. A net profits interest is an interest in gross production from a property which is measured by the net profit which remains after the owner of the working interest has recovered the cost of exploration, development, and production. A net profits interest may arise in a variety of ways. For example, a landowner or lease holder may grant a lease or sublease and retain a right to a percentage of the net profits derived by the lessee or sublessee. A net profits interest may also be acquired by direct purchase of the interest from the owner of the working interest.

Net income limitation

Under present law, the windfall profit on any barrel of crude oil cannot exceed 90 percent of net income allocable to such barrel. The "net income" allocable to any barrel of oil is equal to the total taxable income of the property attributable to the production of taxable crude oil divided by the total number of barrels of taxable crude oil produced from the property during the taxable year. For this purpose, the taxable income from the property is determined under section 613A (relating to percentage depletion) but without regard to the deductions for depletion, the windfall profit tax, intangible drilling or development costs (except for dry hole cost), or qualified tertiary injection expense deductions, otherwise allowable, but with regard to a deemed cost depletion deduction in the usual case.

Because of the interactions between the definition of producer and the net income limitation, it is possible to design a transaction in which the owner of a working interest in proven property transfers that working interest to another party in exchange for a very large (e.g., 99 percent net profits interest. In such a case, the new working interest owner's windfall profit tax on the production allocated to him could be limited by the net income limitation.

If all the cost borne by the new working interest owner are properly taken into account for net income limitation purposes, then his taxable windfall profit would be limited to 90 percent of the one percent of net profits that he receives in addition to the cost recovery oil.

The windfall profit tax on the retained net profits interest would be the same as the tax on that production which had existed prior to the transfer. The effect of such a transaction, if properly structured, would be to eliminate the tax on the oil which is used to pay for the cost of operating the property. Thus, the aggregate windfall profit tax from the two new interest would be less than the windfall profit tax that would have been imposed in the absence of such a transfer.

State exemption

Under present law, production allocable to the economic interest of a State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof, is exempt from the windfall profit tax if the net income received by such entity with respect to its economic interest is dedicated to a public purpose.

Explanation of provision

The bill would prevent the use of net profits agreements entered into after March 31, 1982, to avoid the windfall profit tax on oil which is used to finance the exploration, development and operation of the property. This would be accomplished by requiring that any cost recovery oil allocated under the net profits agreement must be allocated to the parties to the agreement in proportion to their share of the net production from the property remaining after allocation of the cost recovery oil. A net profits agreement is defined as an agreement entered into (or renewed) after March 31, 1982, which provides for the sharing of part or all of the production of crude oil from a property if (1) one or more persons are reimbursed for qualified cost through the allocation of cost recovery oil and (2) one or more persons are entitled to receive a share of any production remaining after reduction for the cost recovery oil.

This definition of net profits agreement is not intended to include a limited carried interest arrangement under which the carried party has the right to a specified share of the working interest after the carrying party recovers the cost of primary development (*i.e.*, after payout). In such a case, the carried party is never entitled to receive a share of the "net profits" remaining after the recovery of cost; rather, the first oil in which the carried party shares is burdened by all the cost of its own production which arises after payout.

Cost recovery oil is defined as crude oil produced from the property which is allocated to reimburse a person for amounts paid or incurred exploring for, or developing or producing oil and gas from one or more oil or gas wells on the property. These costs would include a percentage add on to the actual out of pocket cost of the reimbursed party since such add-on should be considered as reimbursement for overhead or other indirect costs.

In addition to amending the definition of producer in the case of a net profits agreement, the bill provides that the same allocations of cost recovery oil and a similar allocation of the underlying cost should be made for purposes of computing the net income limitation of each of the producers participating in the net profits agreement. Thus, the net income limitation treatment of depletion and intangible drilling costs, for example, will be determined in accordance with the new allocation rules for the windfall profit tax and not under the usual income tax rules.

Effective date

The provision generally applies to agreements entered into or renewed after March 31, 1982. The bill also provides a special effective date rule for net profits interest agreements which provide that 90 percent or more of the net profit is to be received by a governmental entity or charity that is exempt from the windfall profit tax. In such cases, the new net profits agreement rule is applicable without regard to the March 31, 1982, effective date. Thus, preexisting arrangements between governmental units or charities on the one hand and private producers on the other hand, would be subject to the new rule if the exempt entity is entitled to 90 percent or more of the net profit.

10. Definition of crude oil (sec. 201(h)(2) of the bill and sec. 4996 of the Code)

Present law

The windfall profit tax is an excise tax on the removal of taxable crude oil from the premises from which it was produced. The tax is imposed upon the owner of the economic interest in the crude oil in place. Taxable crude oil is all domestic crude oil other than crude oil which is specifically exempted from the tax. The term "crude oil" is defined by reference to the June 1979 regulations of the Department of Energy. These regulations define crude oil as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through service separating facilities. "Crude oil" includes condensate recovered in associated or non-associated production by mechancial separators, whether located on the lease, at central field facilities or at any point at or before the inlet side of a gas processing plant and natural gas liquids treated as crude oil under the June 1979 energy regulations. The term "domestic" refers to crude oil produced from an oil well located in the United States or a possession of the United States

Explanation of provision

The bill would modify two provisions in the windfall profit tax to clarify the treatment of condensate which is recovered from natural gas after the natural gas has been removed from the premises from which it was produced. First, the bill would modify the concept of removal, and hence the time at which the tax on condensate is imposed. Specifically, in the case of condensate which is recovered by mechanical separation after the natural gas is removed from the premises from which it is produced (and at or before the inlet side of the gas processing plant), the time of removal would be the time at which the condensate is, in fact, recovered. This amendment does not affect the liability of the producer for the windfall profit tax on condensates, rather, it simply addresses the question of when the windfall profit tax is imposed.

Present law requires the first purchaser of domestic crude oil to withhold the windfall profit tax from amounts paid to the producer unless the Secretary provides an exception to this obligation. The

Secretary may wish to modify the present withholding regulations to reflect this change with respect to the time of removal of condensate recovered off the premises. For example, a gas processing plant operator may recover condensate at the inlet side of the gas processing plant under a contract which allocates a portion of the condensate recovered to the gas processor as compensation for services and may sell that recovered condensate to a third party. The sale may be in part for the account of the producer and in part for the processors own account. In such a case, the Secretary could require withholding by the third party purchaser on the condensate sold for the account of the producer and could require the gas processer to withhold the tax with respect to the portion of recovered condensate which he is entitled to take as compensation for his services. The Secretary could also provide some limited relief from the withholding obligations of present law in the case of first purchasers who failed to withhold on condensate recovered off the premises because of any lack of clarity in prior law.

The bill strikes the word oil from the definition of domestic so that the term domestic refers to all wells whether they produce oil, gas, or some other substance. By making this amendment, the committee does not intend to imply, that it found merit to the argument advanced by some tax advisors that condensate produced from "gas" wells was not subject to the windfall profit tax.

The committee has not included in the bill any provision directly addressing the computation of removal price. The determination of this price will depend on the facts and circumstances of the particular case. Since the removal price is generally determined on the same basis as gross income for depletion purposes, it generally would not include the value attributable to transportation or processing. For example, if the producer is not compensated for condensate recovered after gas is removed from the premises and is not compensated for the condensate content of the gas removed from the premises, then no windfall profit tax will be imposed on the producer since the removal price of the condensate will be zero. Even where the producer is compensated for the condensate content of the gas removed from the premises, there would be no windfall profit tax liability when the removal price is less than the base price for that crude oil. However, under section 4996(f) of present law, the Secretary of the Treasury has broad authority to adjust the removal price of any crude oil to clearly reflect the fair market value of the oil. Thus, if a first purchaser and producer attempted to understate the value of condensate and overstate the value of natural gas, the Secretary would have full authority to make correcting adjustments. However, this authority would not be appropriate to use when the producer recovers and sells condensate separated from the gas stream and the gas pipeline purchases dry gas. Nor would the use of this authority be appropriate when additional incidental liquids are recovered, for example, by a pipeline, after the inlet side of the gas processing plant.

Effective date

The provision applies as if it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

11. Penalty for failure to make windfall profit tax returns (sec. 201(i) of the bill and sec. 4997 of the Code)

Present law

Under present law, any taxpayer liable for the windfall profit tax, any producer or purchaser of domestic crude oil, and any operator of a well from which the domestic crude oil is produced, must keep such records, make such returns, and furnish such information to the Secretary as he may by regulation prescribe. Under present law, there is no penalty which attaches to a failure to do any of these acts except that a failure to furnish a statement described in section 6050C (relating to operator's certificates, *etc.*), may result in a penalty of $10 for each failure to furnish a statement with the penalty for all such failures during any such calendar year not to exceed $25,000. In contrast, present law generally provides specific penalties for failures to do acts specifically required by statute. For example, failures to file information statements are provided for in section 6052.

Explanation of provision

The bill provides fixed penalties for any failure to keep such records, make such returns, and furnish such information with respect to the windfall profit tax as the Secretary may by regulation prescribe. The bill also clarifies that the Secretary may by regulation require that certain taxpayers furnish information statements to such other persons as the Secretary may prescribe.

Effective date

This provision will be effective with respect to any return and statement the due date of which (without regard to extensions) is after the date of enactment.

12. Estimated tax (sec. 201(j) of the bill and secs. 6015, 6154, 6654, 6655 of the Code)

Present law

Under present law, both individuals and corporations must, under certain conditions, pay estimated tax. Currently, withheld windfall profit tax is not considered in the determination of the amount of estimated taxes that must be paid.

Explanation of provision

The bill provides the Secretary with discretion to allow any overpayment of the windfall profit tax to be taken into account in determining the amount of estimated tax payments. The discretion provided to the Secretary in this regard is broad. Thus, for example, the Secretary could determine that an overpayment in windfall profit tax may not be taken into account when the producer is entitled to an exemption from windfall profit tax withholding or when an overpayment is created late in the year to avoid the estimated tax penalties.

Similarly, the Secretary could provide that only current year over payments should be taken into account for estimated tax purposes so that the exceptions to the estimated tax penalties which depend on the prior year's tax liability would not be broadened by overpayments of the windfall profit tax in the prior year.

Effective date

The provision applies as it had been included in the Crude Oil Windfall Profit Tax Act of 1980.

13. Incorporation of an oil or gas property (sec. 202(d) of the bill and sec. 613A of the Code)

Present law

Under present law, average daily oil (or equivalent gas) production of up to 1,000 barrels by independent producers and certain royalty owners is entitled to percentage depletion treatment. This 1,000 barrel amount is not available with respect to any proven property which is transferred after 1974, except for transfers at death and certain transfers where the 1,000 barrels must be allocated between the transferor and the transferee.

The anti-transfer rules do not apply in the case of certain transfers by an individual of oil or gas properties (and up to $1,000 cash) to a corporation if all the stock of the corporation is issued to individuals solely for oil and gas property (and up to $1,000 cash). In such a case, additional rules apply to prevent the proliferation of interests entitled to percentage depletion through the use of the resulting corporation. These rules require allocation of the 1,000 barrel amount between related parties and prohibit certain stock transfers. Similar rules apply for windfall profit tax purposes. The term "oil or gas property" includes only interests in oil or gas in place and not associated production equipment.

Explanation of provision

The House bill expands the term "oil or gas property" to include necessary production equipment associated with a well which is in place when the well is transferred. The term "necessary production equipment" includes, for example, the "christmas tree", casing, pump jacks, and other equipment essential for the efficient and effective production of oil and gas from a well.

Effective date

This provision would be effective with respect to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A to periods after December 31, 1979.

14. Clerical amendments

A. Code section 4988(b)(3) is amended by striking out "purposes of paragraph 2" and inserting in lieu thereof "purposes of this subsection."

B. Code section 4992(d)(3)(B)(i) is amended by striking out "has the property" and inserting in lieu thereof "has the interest."

C. Section 4994(c)(2)(A) is amended by striking out "the taxpayer" each place it appears and inserting in lieu thereof "the producer".

D. Section 44(D)(f) is amended by striking "December 3, 1979" each place it appears and inserting in lieu thereof "December 31, 1979."

E. Section 193(b)(1) is amended by striking out "during the taxable year."

F. Section 223(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 is amended by striking out "paragraph 10" and inserting in lieu thereof "subparagraph (A), paragraph (10)."

Effective dates

These provisions apply as if they had been included in the Crude Oil Windfall Profit Tax Act of 1980.

TITLE III.—TECHNICAL CORRECTIONS TO THE INSTALLMENT SALES REVISION ACT OF 1980, ETC.

1. Sales of depreciable property between related parties (sec. 301 of the bill and sec. 1239 of the Code)

Present law

The Installment Sales Revision Act of 1980 provides that sales or exchanges of depreciable property between certain related parties are denied both capital gains treatment (sec. 1239) and installment sales reporting (sec. 453(g)). Related parties include a husband and wife, a taxpayer and a corporation or partnership which is 80-percent owned by the taxpayer, or two entities (corporations or partnerships) each of which is 80-percent owned by a person. Stock or partnership interests held by one spouse are treated as also held by the other spouse.

Under the Act, because of the application of "back attribution" rules, two entities could be treated as related even though there is no common 80-percent owner of the entities. For example, if Corporation X is owned 100 percent by A and Corporation Y is a publicly traded corporation in which A owns one share of stock, X and Y would be treated as related, since Y would be treated as owning 100 percent of X through "back attribution" of A's ownership of X.

Explanation of provision

The bill corrects the application of "back attribution" constructive ownership rules under section 1239 for cases where the entities are not considered 80-percent owned by the same person. Thus, in the case of commonly-owned corporations, if no one person owns, directly or indirectly, 80 precent or more of the stock of both corporations, the corporations will not be subject to the ordinary income rules of section 1239 with respect to any sale of depreciable property between them. For example, if Corporation X is owned 100 percent by A, and Corporation Y is owned 79 percent by A and 21 percent by a person unrelated to A, then X and Y will not be treated as related parties for purposes of section 1239. However, if A owns 81 percent of the Corporation Y stock, section 1239 will continue to apply, since both corporations are 80-percent owned entities with respect to A.

Under the bill, if Corporation X owns at least 80 percent (by value) of the stock of Corporation Y, the corporations are related parties and section 1239(a) will continue to apply to sales of depreciable property between them. If the corporations file a consolidated return, the rules applicable to sales between X and Y will continue to be governed by the consolidated return regulations (Reg. § 1.1502–13).

Effective date

The provision applies to sales or exchanges made after October 19, 1980.

2. Receipt of like-kind property (sec. 303 of the bill and sec. 453 (f) of the Code)

Present law

The Act provided that property permitted to be received without recognition of gain in certain like-kind exchanges would not be treated as a payment for purposes of reporting income under the installment method.

Explanation of provision

The bill clarifies that receipt of like-kind property will qualify as a "payment" for purposes of determining whether a transaction is an installment sale.

Effective date

The provision applies to sales or exchanges made after October 19, 1980.

3. Clerical amendment to the Installment Sales Revision Act

A reference of Code section 453B(d)(2) to section 453B(a) is corrected.

4. Technical corrections to the Bankruptcy Tax Act of 1980 (sec. 304 of the bill and secs. 368 and 443 of the Code)

a. A cross reference in section 443 to section 1398(d)(2)(E) is corrected.

b. A meaningless reference to "stock" in section 368(a)(2)(C) is deleted.

5. Miscellaneous amendments (sec. 305 of the bill)

a. A clerical amendment to the definition of "open year" in the effective date to Public Law 96–603 is made.

b. Section 194, relating to employer liability trusts, is redesignated as section 194A.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 6056. The committee estimates that the provisions contained in the bill, H.R. 6056, as amended, will not have any overall revenue impact. It should be noted that certain individual provisions may appear to result in minor revenue increases or decreases. However, the revenue effects which were included in the original Acts took into account the basic Congressional policy contained in the revisions made by this bill.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 6056, as amended, was ordered favorably reported by voice vote.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 3(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 6056, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to the application of the statutory language of the Economic Recovery Tax Act of 1981 and certain 1980 tax legislation, correction of clerical errors and other unintended effects contained in such Acts, and the need to make certain technical changes in such Acts that the committee concluded that it is appropriate to enact the provisions contained in the bill.

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

Consultation with Congressional Budget Officials on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 6056, the Technical Corrections Act of 1982. This bill makes technical corrections to the Economic Recovery Tax Act of 1981, the Crude Oil Windfall Profit Tax Act of 1980, and the Installment Sales Revision Act of 1980.

The bill does not provide any new budget authority or any new or increased tax expenditures.

In accordance with Section 403 of the Budget Act, the Congressional Budget Office estimates that the provisions of the bill will not have any significant revenue impact.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

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Subpart A—Credits Allowable

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SEC. 44D. CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) ALLOWANCE OF CREDIT.—* * *

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(f) APPLICATION OF SECTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply with respect to qualified fuels—

(A) which are—

(i) produced from a well drilled after December 31, 1979, and before January 1, 1990, or

(ii) produced in a facility placed in service after December 31, 1979, and before January 1, 1990, and

(B) which are sold after [December 3, 1979,] *December 31, 1979,* and before January 1, 2001.

(2) SPECIAL RULES APPLICABLE TO QUALIFIED PROCESSED WOOD AND SOLID AGRICULTURAL BYPRODUCT STEAM.—

(A) CREDIT ALLOWED ONLY FOR CERTAIN PRODUCTION.—In the case of qualifying processed wood fuel and steam from solid agricultural byproducts, this section shall apply only with respect to—

(i) qualifying processed wood fuel produced in facilities placed in service after [December 3, 1979,] *December 31, 1979,* and before January 1, 1982, which is sold before the later of—

(I) October 1, 1983, or

(II) the date which is 3 years after the date on which the facility is placed in service; and

(ii) steam produced in facilities placed in service after December 31, 1979, from solid agricultural byproducts which is sold before January 1, 1985.

(B) EXPANDED PRODUCTION OF STEAM TREATED AS NEW FACILITY PRODUCTION.—For purposes of this subsection and subsection (d)(5), in the case of a facility for the production of steam from solid agricultural byproducts which was placed in service before January 1, 1980, any production of steam attributable to an expansion of the capacity of the facility to produce such steam through placing additional or replacement equipment in service after December 31, 1979, shall be treated as if it were produced by a facility placed in service on the date on which such equipment is placed in service.

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SEC. 44F. CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) GENERAL RULE.—* * *

(b) QUALIFIED RESEARCH EXPENSES.—For purposes of this section—

(1) QUALIFIED RESEARCH EXPENSES.—The term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) IN-HOUSE RESEARCH EXPENSES.—

(A) IN GENERAL.—The term "in-house research expenses" means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or *accrues any amount from any other person for the right to use substantially identical personal property.*

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SEC. 44G. EMPLOYEE STOCK OWNERSHIP CREDIT.

(a) GENERAL RULE.—* * *

(b) LIMITATION BASED ON AMOUNT OF TAX.—

(1) LIABILITY FOR TAX.—

(A) IN GENERAL.—The credit allowed by subsection (a) for any taxable year shall not exceed an amount equal to the sum of—

(i) so much of the liability for tax for the taxable year as does not exceed $25,000, plus

(ii) 90 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

(B) LIABILITY FOR TAX DEFINED.—For purposes of this paragraph the term "liability for tax" means the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowed under a section of this subpart having a lower number designation than this section, other than credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a).

(C) CONTROLLED GROUPS.—In the case of a controlled group of corporations, the $25,000 amount specified in subparagraph (A) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group of corporations" has the meaning assigned to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of such section).

(2) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

(A) ALLOWANCE OF CREDIT.—If the amount of credit determined under this section for any taxable year exceeds the limitation provided under paragraph (1)(A) for such taxable year (hereinafter in this paragraph referred to as the "unused credit year"), such excess shall be—

(i) an employee stock ownership credit carryback to each of the 3 taxable years preceding the unused credit year, and

(ii) an employee stock ownership credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year ending before January 1, 1983, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(B) LIMITATION.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided under paragraph (1)(A) for such taxable year exceeds the sum of—

(i) the credit allowable under this section for such taxable year, and

(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

(3) CERTAIN REGULATED COMPANIES.—No credit *attributable to compensation taken into account for the ratemaking purposes involved* shall be allowed under this section to a taxpayer if—

(A) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employees stock ownership plan which meets the requirements of section 409A;

(B) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan; or

(C) any portion of the amount of such credit which results from a transfer described in subparagraph (A) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

Under regulations prescribed by the Secretary, rules similar to the rules of paragraphs (4) and (7) of section 46(f) shall apply for purposes of the preceding sentence.

* * * * * * *

Subpart B—Rules for Computing Credit for Investment in Certain Depreciable Property

* * * * * * *

SEC. 46. AMOUNT OF CREDIT.

(a) GENERAL RULE.

(1) FIRST-IN-FIRST-OUT RULE.—The amount of the credit allowed by section 38 for the taxable year shall be an amount equal to the sum of—

(A) the investment credit carryovers carried to such taxable year,

(B) the amount of the credit determined under paragraph (2) for such taxable year, plus

(C) the investment credit carrybacks carried to such taxable year.

(2) AMOUNT OF CREDIT.—

(A) IN GENERAL.—The amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

(i) the regular percentage,

(ii) in the case of energy property, the energy percentage,

(iii) the employee plan percentage, and

(iv) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation percentage.

(B) REGULAR PERCENTAGE.—For purposes of this paragraph, the regular percentage is 10 percent.

(C) ENERGY PERCENTAGE.—For purposes of this paragraph—

(i) IN GENERAL.—The energy percentage shall be determined in accordance with the following table:

Column A—Description	*Column B—Percentage*	*Column C—Period*	
In the case of:	*The energy percentage is:*	*For the period:*	
		Beginning on:	*And ending on:*
I. GENERAL RULE.—Property not described in any of the following provisions of this column.	10 percent	Oct. 1, 1978	Dec. 31, 1982.
II. SOLAR, WIND, OR GEOTHERMAL PROPERTY.—Property described in section 48(l)(2)(A)(ii) or 48(l)(3)(A)(viii).	A. 10 percent B. 15 percent	Oct. 1, 1978 Jan. 1, 1980	Dec. 31, 1979. Dec. 31, 1985.
III. OCEAN THERMAL PROPERTY.—Property described in section 48(l)(3)(A)(ix).	15 percent	Jan. 1, 1980	Dec. 31, 1985.
IV. QUALIFIED HYDROELECTRIC GENERATING PROPERTY.—Property described in section 48(l)(2)(A)(vii).	11 percent	Jan. 1, 1980	Dec. 31, 1985.
V. QUALIFIED INTERCITY BUSES.—Property described in section 48(l)(2)(A)(ix).	10 percent	Jan. 1, 1980	Dec. 31, 1985.
VI. BIOMASS PROPERTY.—Property described in section 48(l)(15).	10 percent	Oct. 1, 1978	Dec. 31, 1985.

(ii) PERIODS FOR WHICH PERCENTAGE NOT SPECIFIED.—In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under clause (i) (as modified by clauses (iii) and (iv)).

(iii) LONGER PERIOD FOR CERTAIN LONG-TERM PROJECTS.—For the purpose of applying the energy percentage contained in subclause (I) of clause (i) with respect to property which is a part of a project with a normal construction period of 2 years or more (within the meaning of section 46(d)(2)(A)(i)), "December 31, 1990" shall be substituted for "December 31, 1982" if—

(I) before January 1, 1983, the taxpayer has completed all engineering studies in connection with the commencement of the constuction of the project, and has applied for all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project, and

(II) before January 1, 1986, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

(iv) LONGER PERIOD FOR CERTAIN HYDROELECTRIC GENERATING PROPERTY.—If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in subclause (IV) of clause (i) with respect to such property, "December 31, 1988" shall be substituted for "December 31, 1985."

(D) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.—For purposes of this paragraph, the regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

(E) EMPLOYEE PLAN PERCENTAGE.—For purposes of this paragraph, the employee plan percentage is—

(i) with respect to the period beginning on January 21, 1975, and ending on December 31, 1982, 1 percent,

(ii) with respect to the period beginning on January 1, 1977, and ending on December 31, 1982, an additional percentage (not in excess of ½ of 1 percent) which results in an amount equal to the amount determined under section 48(n)(1)(B), and

(iii) with respect to any period beginning after December 31, 1982, zero.

This subparagraph shall apply to a corporation only if it meets the requirements of section 409A and only if it elects (at such time, in such form, and in such manner as the Secretary prescribes) to have this subparagraph apply.

(F) REHABILITATION PERCENTAGE.—For purposes of this paragraph—

(i) IN GENERAL.—

In the case of qualified rehabilitation expenditures with respect to a:	The rehabilitation percentage is:
30-year building	15
40-year building	20
Certified historic structure	25

(ii) REGULAR AND ENERGY PERCENTAGES NOT TO APPLY.—The regular percentage and the energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(iii) DEFINITIONS.—

(I) 30-YEAR BUILDING.—The term "30-year building" means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

(II) 40-YEAR BUILDING.—The term "40-year building" means [any] *a qualified rehabilitated* building (other than a certified historic structure) which would meet the requirements of section 48(g)(1)(B) if "40" were substituted for "30" each place it appears in subparagraph (b) thereof.

(III) CERTIFIED HISTORIC STRUCTURE.—The term "certified historic structure" [has the meaning given to such term by section 48(g)(3)] *means a qualified rehabilitated building which meets the requirements of section 48(g)(3).*

* * * * * * *

(c) QUALIFIED INVESTMENT.—

(1) IN GENERAL.—* * *

* * * * * * *

(7) APPLICABLE PERCENTAGE FOR RECOVERY PROPERTY.—Notwithstanding paragraph (2), the applicable percentage for purposes of paragraph (1) shall be—

[(A) in the case of 15-year public utility, 10-year, or 5-year property (within the meaning of section 168(c)), 100 percent, and]

(A) in the case of property other than 3-year property (within the meaning of section 168(c)), 100 percent, and

(B) in the case of 3-year property (within the meaning of section 168(c)), 60 percent.

For purposes of subparagraph (A), RRB replacement property (within the meaning of section 168(f)(3)(B)) [shall be treated as 5-year property] *shall be treated as property which is not 3-year property.*

* * * * * * *

SEC. 47. CERTAIN DISPOSITIONS, ETC., OF SECTION 38 PROPERTY.

(a) GENERAL RULE.—* * *

* * * * * * *

(d) PROPERTY CEASING TO BE AT RISK.—

(1) In general.—If the taxpayer ceases to any extent to be at risk (within the meaning of section 46(c)(8)(B)) with respect to any amount in connection with section 38 property, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from substituting, in determining qualified investment, the amount determined under section 46(c)(8) with respect to such property if, on the date the property was placed in service, the taxpayer had not been at risk with respect to the amount he ceased to be at risk to.

(2) Certain transfers not treated as ceasing to be at risk.—If, after the 12-month period after the date on which a taxpayer borrows an amount from a qualified person (within the meaning of section [48] *46*(c)(8)(D)) with respect to which such taxpayer is considered at risk under section [48] *46*(c)(8)(B), the qualified person transfers or agrees to transfer any evidence of such indebtedness to a person who is not a qualified person, then, for purposes of paragraph (1), the taxpayer shall not be treated as ceasing to be at risk with respect to such amount.

(3) Special rules for certain energy property.—

(A) In general.—In the case of the second taxable year following the taxable year in which any qualified energy property (within the meaning of section [46(c)(8)(E)] *46(c)(8)(F)*) is placed in service by the taxpayer and any succeeding taxable year, the taxpayer, for purposes of paragraph (1), shall be treated as ceasing to be at risk with respect to such property for such taxable year in an amount equal to the credit recapture amount (if any).

* * * * * * *

SEC. 48. DEFINITIONS; SPECIAL RULES.

(a) Section 38 Property.—

(1) In general.—Except as provided in this subsection, the term "section 38 property" means—

(A) tangible personal property (other than an air conditioning or heating unit), or

(B) other tangible property (not including a building and its structural components) but only if such property—

(i) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) constitutes a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constitutes a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state), or

(C) elevators and escalators, but only if—

(i) the construction, reconstruction, or erection of the elevator or escalator is completed by the taxpayer after June 30, 1963, or (ii) the elevator or escalator is acquired after June 30, 1963, and the original use of such elevator or escalator commences with the taxpayer and commences after such date, or

(D) single purpose agricultural or horticultural structures; or

(E) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures (within the meaning of subsection (g)), or

(F) in the case of qualified timber property (within the meaning of section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as section 38 property) and taken into account under section 194 (after the application of section 194(b)(1)), or

(G) a storage facility *(not including a building and its structural components)* used in connection with the distribution of petroleum or any primary product of petroleum.

Such term includes only recovery property (within the meaning of section 168 without regard to any useful life) and any other property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and having a useful life (determined as of the time such property is placed in service) of 3 years or more. The preceding sentence shall not apply to property described in subparagraph (F) and, for purposes of this subpart, the useful life of such property shall be treated as its normal growing period.

* * * * * * *

(g) SPECIAL RULES FOR QUALIFIED REHABILITATED BUILDINGS.—For purposes of this subpart—

(1) QUALIFIED REHABILITATED BUILDING DEFINED.—

(A) IN GENERAL.—The term "qualified rehabilitated building" means any building (and its structural components)—

(i) which has been substantially rehabilitated,

(ii) which was placed in service before the beginning of the rehabilitation, and

(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process.

(B) 30 YEARS MUST HAVE ELAPSED SINCE CONSTRUCTION.—In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless there is a period of at least 30 years between the date the physical work on the rehabilitation began and the date the building was first placed in service.

(C) SUBSTANTIALLY REHABILITATED DEFINED.—

(i) IN GENERAL.—For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during [the 24-month period ending on the last day of the taxable year] *the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulations) and ending with or within the taxable year* exceed the greater of—

(I) the adjusted basis of such [property] *building (and its structural components),* or

(II) $5,000.

The adjusted basis of the [property] *building (and its structural components)* shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the [property] *building* (within the meaning of section 1250(e)), whichever is later.

(ii) SPECIAL RULE FOR PHASED REHABILITATION.—In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting "60-month period" for "24-month period".

* * * * * * *

(5) ADJUSTMENT TO BASIS.—

(A) IN GENERAL.—For purposes of this subtitle, if [a credit is allowed under this section] *a credit is determined under section 46(a)(2)* for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so [allowed] *determined.*

(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any qualified rehabilitated building the basis of which was reduced under subparagraph (A), the basis of such building (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5).

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Subpart D—Rules for Computing Credit for Employment of Certain New Employees

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SEC. 51. AMOUNT OF CREDIT.

(a) DETERMINATION OF AMOUNT.—* * *

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(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

(1) IN GENERAL.—* * *

* * * * * * *

(8) YOUTH PARTICIPATING IN A QUALIFIED COOPERATIVE EDUCATION PROGRAM.—

(A) IN GENERAL.—The term "youth participating in a qualified cooperative education program" means any individual who is certified by the school participating in the program as—

(i) having attained age 16 and not having attained age 20,

(ii) not having graduated from a high school or vocational school,

(iii) being enrolled in and actively pursuing a qualified cooperative education program, and

(iv) being a member of an economically disadvantage family (as determined under paragraph (11)).

(B) QUALIFIED COOPERATIVE EDUCATION PROGRAM DEFINED.—The term "qualified cooperative education program" means a program of vocational education for individuals who (through written cooperative arrangements between a qualified school and 1 or more employers) receive instruction (including required academic instruction) by alternation of study and school with a job in any occupational field (but only if these 2 experiences are planned by the school and employer so that each contributes to the student's education and employability).

(C) QUALIFIED SCHOOL DEFINED.—The term "qualified school" means—

(i) a specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market,

(ii) the department of a high school exclusively or principally used for providing vocational education to persons who are available for study in preparation for entering the labor market, or

(iii) a technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

A school which is not a public school shall be treated as a qualified school only if it is exempt from tax under section 501(a).

(D) WAGES.—In the case of remuneration attributable to services performed while the individual meets the requirements of *clauses (i), (ii), and (iii) of* subparagraph (A), wages, and unemployment insurance wages, shall be determined without regard to section 3306(c)(10)(C).

(9) ELIGIBLE WORK INCENTIVE EMPLOYEES.—The term "eligible work incentive employee" means an individual who has been certified by the designated local agency as—

(A) being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer, or

(B) having been placed in employment under a work incentive program established under section 432(b)(1) *or 445* of the Social Security Act.

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PART VI—MINIMUM TAX FOR TAX PREFERENCES

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SEC. 55. ALTERNATIVE MINIMUM TAX FOR TAXPAYERS OTHER THAN CORPORATIONS.

(a) Alternative Minimum Tax Imposed.—* * *

* * * * * * *

(c) Credits.—

(1) In general.—For purposes of—

(A) determining the amount of any credit allowable under subpart A of part IV of this subchapter (other than the foreign tax credit allowable under section 33(a)) against the tax imposed by subsection (a), the tax imposed by subsection (a) shall be treated as a tax imposed by this chapter only to the extent of the amount which would be determined under subsection (a)(1) if the alternative minimum taxable income was reduced by the sum of—

(i) the net capital gain, and

(ii) the adjusted itemized deductions, and

(B) determining the amount of any such credit (including the credit allowable under section 33(a)) against the tax imposed by this chapter (other than the tax imposed by this section) for the current taxable year, this section shall be disregarded.

(2) Rules for determining amount of credit allowable.—For purposes of determining the amount of any credit under subpart A of part IV of this subchapter (other than the credits imposed by sections 31, 39, and 43) which can be taken against the tax imposed by subsection (a)—

(A) the amount of such credit shall be increased by an amount equal to the lesser of—

(i) the amount of such credit allowable in computing the regular tax for the current taxable year, or

(ii) the excess of—

(I) the amount of the tax imposed by subsection (a), over

(II) the sum of the amounts determined under this subparagraph with respect to credits allowed under a section of such subpart having a higher number designation than such credit (other than the credits allowable by sections 31, 39, 43), and

(B) in the case of any credit under section 38, 40, or 44B, such credit shall be reduced, under regulations prescribed by the Secretary, by that portion of such credit which is not attributable to an active trade or business of the taxpayer.

(3) FOREIGN TAX CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(A) DETERMINATION OF FOREIGN TAX CREDIT.—The total amount of the foreign tax credit which can be taken against the tax imposed by subsection (a) shall be determined under subpart A of part III of subchapter N (sec. 901 and following).

(B) SECTION 904(a) LIMITATION.—For purposes of the determination provided by subparagraph (A), the limitation of section 904(a) shall be an amount equal to the same proportion of the sum of the tax imposed by subsection (a) against which such credit is taken and the regular tax (excluding the tax imposed by section 56) as—

(i) the taxpayer's alternative minimum taxable income from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

(ii) his entire alternative minimum taxable income.

For such purpose, the amount of the limitation of section 904(a) shall not exceed the tax imposed by subsection (a).

(C) DEFINITION OF ALTERNATIVE MINIMUM TAXABLE INCOME FROM SOURCES WITHOUT THE UNITED STATES.—For purposes of subparagraph (B), the term "alternative minimum taxable income from sources without the United States" means the items of gross income from sources without the United States adjusted as provided in subparagraphs (A), (B), and (C) of section 55(b)(1) (taking into account in such adjustment only items described in such paragraphs which are properly attributable to items of gross income from sources without the United States).

(D) SPECIAL RULE FOR APPLYING SECTION 904(C).—In determining the amount of foreign taxes paid or accrued during the taxable year which may be deemed to be paid or accrued in a preceding or succeeding taxable year under section 904(c)—

(i) the limitation of section 904(a) shall be increased by the amount of the limitation determined under subparagraph (B), and

(ii) any increase under paragraph (2)(A) shall be taken into account.

(4) CARRYOVER AND CARRYBACK OF CERTAIN CREDITS.—

(A) IN GENERAL.—For purposes of determining the amount of any carryover or carryback to any other taxable year of any credit allowable under subpart A of part IV of this subchapter (other than section 33), the amount of the limitation under section 44F(g)(1), 44E(e)(1),44C(b) (1)and (2), [44G(b)(1),] 53(b), 50A(a)(2), or 46(a)(3) (to the extent such limitation does not exceed the amount of the credit allowable in computing the regular tax for the current taxable year) shall be increased for the current taxable year by the amount determined under subparagraph (A) of paragraph (1) of this subsection, and decreased by—

(i) the sum of the credits allowed under a section having a lower number designation than the section allowing such credit (other than the credits allowable by sections 31, 33 39, and 43) against the tax imposed by subsection (a), and

(ii) the amount determined with respect to such credit under paragraph (2)(B) for the current taxable year.

(B) AMOUNT OF CREDIT.—Any increase under paragraph (2)(A) shall be taken into account in determining the amount of any carryover or carryback from the current taxable year.

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) IN GENERAL.—For purposes of this part, the items of tax preference are—

(1) ADJUSTED ITEMIZED DEDUCTIONS.—In the case of an individual, an amount equal to the adjusted itemized deductions for the taxable year (as determined under subsection (b)).

(2) ACCELERATED DEPRECIATION ON REAL PROPERTY.—With respect to each section 1250 property (as defined in section 1250(c)), the amount by which the deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to section 167(k)) for which the taxpayer has held the property.

(3) ACCELERATED DEPRECIATION ON LEASED PERSONAL PROPERTY.—With respect to each item of section 1245 property (as defined in section 1245(a)(3)) which is subject to a lease, the amount by which—

(A) the deduction allowable for the taxable year for depreciation or amortization, exceeds

(B) the deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight-line method for each taxable year of its useful life for which the taxpayer has held the property.

For purposes of subparagraph (B), useful life shall be determined as if section 167(m)(1) (relating to asset depreciation range) did not include the last sentence thereof.

(4) AMORTIZATION OF CERTIFIED POLLUTION CONTROL FACILITIES.—With respect to each certified pollution control facility for which an election is in effect under section 169, the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(5) AMORTIZATION OF RAILROAD ROLLING STOCK.—With respect to each unit of railroad rolling stock for which an election is in effect under section 184, the amount by which the deduction

allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(6) STOCK OPTIONS.—With respect to the transfer of a share of stock pursuant to the exercise of a qualified stock option (as defined in section 422(b)) or a restricted stock option (as defined in section 424(b)), the amount by which the fair market value of the share at the time of exercise exceeds the option price.

(7) RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 585 or 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

(8) DEPLETION.—With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year).

(9) CAPITAL GAINS.—

(A) INDIVIDUALS.—In the case of a taxpayer other than a corporation, an amount equal to the net capital gain deduction for the taxable year determined under section 1202.

(B) CORPORATIONS.—In the case of a corporation having a net capital gain for the taxable year, an amount equal to the product obtained by multiplying the net capital gain by a fraction the numerator of which is the highest rate of tax specified in section 11(b), minus the alternative tax rate under section 1201(a), for the taxable year, and the denominator of which is the highest rate of tax specified in section 11(b) for the taxable year. In the case of a corporation to which section 1201(a) does not apply, the amount under this subparagraph shall be determined under regulations prescribed by the Secretary in a manner consistent with the preceding sentence.

(C) PREFERENCE REDUCTION FOR TIMBER.—In the case of a corporation, the amount of the tax preference under subparagraph (B) shall be reduced (but not below zero) by the sum of—

(i) one-third of the corporation's timber preference income (as defined in subsection (e)), plus

(ii) $20,000,

but in no event shall this reduction exceed the amount of timber preference income.

(D) PRINCIPAL RESIDENCE.—For purposes of subparagraph (A), gain from the sale or exchange of a principal residence (within the meaning of section 1034) shall not be taken into account.

(10) AMORTIZATION OF CHILD CARE FACILITIES.—With respect to each item of section 188 property for which an election is in effect under section 188, the amount by which the deduction

allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(11) **INTANGIBLE DRILLING COSTS.—**

(A) **IN GENERAL.**—With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) **EXCESS INTANGIBLE DRILLING COSTS.**—For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs described in section 263(c) paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under this chapter for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (d)) had been used with respect to such costs.

(C) **NET INCOME FROM OIL, GAS, AND GEOTHERMAL PROPERTIES.**—For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil and gas properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) **PARAGRAPH APPLIED SEPARATELY WITH RESPECT TO GEOTHERMAL PROPERTIES AND OIL AND GAS PROPERTIES.**—This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(3)).

(12) **ACCELERATED COST RECOVERY DEDUCTION.—**

(A) **IN GENERAL.**—With respect to each recovery property (other than 15-year real property) which is subject to a lease, the amount (if any) by which the deduction allowed under section 168(a) *(or, in the case of property described in section 167(k), under section 167)* for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using the straight-line method (with a half-year convention and without regard to salvage value) and a recovery period determined in accordance with the following table:

In the case of:	The recovery period is:
3-year property	5 years.
5-year property	8 years.
10-year property	15 years.
15-year public utility property	22 years.

(B) 15-YEAR REAL PROPERTY.—With respect to each recovery property which is 15-year real property, the amount (if any) by which the deduction allowed under section 168(a) for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using a 15-year period and the straight-line method (without regard to salvage value).

(C) SUBPARAGRAPHS (A) AND (B) INAPPLICABLE WHERE LONGER RECOVERY PERIODS APPLY.—If, pursuant to section 168(b)(3) or 168(f)(2), the recovery period for any property is longer than the recovery period for such property set forth in subparagraph (A) or (B), subparagraph (A) or (B) (as the case may be) shall not apply to such property.

[C] *(D)* PARAGRAPHS (2) AND (3) SHALL NOT APPLY.—Paragraphs (2) and (3) shall not apply to recovery property.

[D] *(E)* DEFINITIONS.—For purposes of this paragraph, the terms "3-year property", "5-year property", "10-year property", "15-year public utility property", "15-year real property", and "recovery property", shall have the same meanings given such terms under section 168.

Paragraphs (3), (11), and (12)*(A)* shall not apply to a corporation other than an electing small business corporation (as defined in section 1371(b)) and a personal holding company (as defined in section 542). For purposes of section 56, in the case of a taxpayer other than a corporation, the adjusted itemized deductions described in paragraph (1) and capital gains described in paragraph (9) shall not be treated as items of tax preference.

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SEC. 58. RULES FOR APPLICATION OF THIS PART.

(a) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—* * *

* * * * * * *

(f) REGULATED INVESTMENT COMPANIES, ETC.—In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment trust to which part II of subchapter M applies—

(1) the item of tax preference set forth in section 57(a)(9) shall not be treated as an item of tax preference of such company or such trust for each taxable year to the extent that such item is attributable to amounts taken into account as income by the shareholders of such company under section 852(b)(3), or by the shareholders or holders of beneficial interests of such trust under section 857(b)(3), and

(2) the items of tax preference of such company or such trust for each taxable year (other than the item of tax preference set forth in section 57(a)(9) and, in the case of a real estate invest-

ment trust, [the item of tax preference set forth in section 57(a)(2)] *the items of tax preference set forth in paragraphs (2) and (12)(B) of section 57(a)*) shall be treated as items of tax preference of the shareholders of such company, or the shareholders or holders of beneficial interests of such trust (and not as items of tax preference of such company or such trust), in the same proportion that the dividends (other than capital gain dividends) paid to each such shareholder, or holder of beneficial interests, bears to the taxable income of such company or such trust determined without regard to the deduction for dividends paid.

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Subchapter B—Computation of Taxable Income

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PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

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SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) GENERAL RULE FOR ANNUITIES.—* * *

* * * * * * *

(o) SPECIAL RULES FOR DISTRIBUTIONS FROM QUALIFIED PLANS TO WHICH EMPLOYEE MADE DEDUCTIBLE CONTRIBUTIONS.—

(1) TREATMENT OF CONTRIBUTIONS.—For purposes of this section and sections 402, 403, and 405, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

(2) ADDITIONAL TAX IF AMOUNT RECEIVED BEFORE AGE 59½.—If—

(A) any accumulated deductible employee contributions are received from a qualified employer plan or government plan [to which the employee made one or more deductible employee contributions],

(B) such amount is received by the employee before the employee attains the age of 59½, and

(C) such amount is not attributable to such employee's becoming disabled (within the meaning of subsection (m)(7)),

then the employee's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the amount so received to the extent that such amount is includible in gross income. For purposes of this title, any tax imposed by this paragraph shall be treated as a tax imposed by subsection (m)(5)(B).

(p) LOANS TREATED AS DISTRIBUTIONS.—For purposes of this section—

(1) TREATMENT AS DISTRIBUTIONS.—

* * * * * * *

(3) QUALIFIED EMPLOYER PLAN, ETC.—For purposes of this subsection, the term "qualified employer plan" means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) [without regard to subparagraph (D) thereof]). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4)).

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SEC. 83. PROPERTY TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.

(a) GENERAL RULE.—* * *

* * * * * * *

(c) SPECIAL RULES.—For purposes of this section—

(1) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual

(2) TRANSFERABILITY OF PROPERTY.—The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

(3) SALES WHICH MAY GIVE RISE TO SUIT UNDER SECTION 16(b) OF THE [SECURITIES AND EXCHANGE ACT OF 1934] *SECURITIES EXCHANGE ACT OF 1934*.—So long as the sale of property at a profit subject a person to suit under section 16(b) of the [Securities and Exchange Act of 1934] ***Securities Exchange Act of 1934,*** such person's rights in such property are—

(A) subject to a substantial risk of forfeiture, and

(B) not transferable.

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent, or

(C) the indebtedness discharged is qualified business indebtedness.

(2) COORDINATION OF EXCLUSIONS.—

(A) TITLE 11 EXCLUSION TAKES PRECEDENCE.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED BUSINESS EXCLUSION.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent that the taxpayer is insolvent.

(3) INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.—In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) REDUCTION OF TAX ATTRIBUTES IN TITLE 11 CASE OR INSOLVENCY.—

(1) IN GENERAL.—The amount excluded from gross income under subparagraph (A) or (B) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) TAX ATTRIBUTES AFFECTED; ORDER OF REDUCTION.—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) CERTAIN CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under—

(i) section 38 (relating to investment in certain depreciable property),

(ii) section 40 (relating to expenses of work incentive programs),

(iii) section 44B (relating to credit for employment of certain new employees), [or]

(iv) section 44E (relating to alcohol used as a fuel) [.], *or*

(v) section 44F (relating to credit for increasing research activities).

For purposes of clause (i), there shall not be taken into account any portion of a carryover which is attributable to the employee plan credit (within the meaning of section 48(o)(3)).

(C) CAPITAL LOSS CARRYOVERS.—Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(D) BASIS REDUCTION.—

(i) IN GENERAL.—The basis of the property of the taxpayer.

(ii) CROSS REFERENCE.—

For provisions for making the reduction described in clause (i), see section 1017.

(E) FOREIGN TAX CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 33.

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SEC. 120. AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) EXCLUSION BY EMPLOYEE FOR CONTRIBUTIONS AND LEGAL SERVICES PROVIDED BY EMPLOYER.—* * *

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(e) TERMINATION.—This section *and section 501(c)(20)* shall not apply to taxable years ending after December 31, 1984.

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SEC. 128. INTEREST ON CERTAIN SAVINGS CERTIFICATES.

(a) IN GENERAL.—* * *

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(c) DEPOSITORY INSTITUTION TAX-EXEMPT SAVINGS CERTIFICATE.—For purposes of this section—

(1) IN GENERAL.—The term "depository institution tax-exempt savings certificate" means any certificate—

(A) which is issued by a qualified savings institution after September 30, 1981, and before January 1, 1983,

(B) which has a maturity of 1 year,

(C) which has an investment yield equal to 70 percent of the average investment yield for the most recent auction (before the week in which the certificate is issued) of United States Treasury bills with maturities of 52 weeks, and

(D) which is made available in denominations of $500.

(2) QUALIFIED INSTITUTION.—The term "qualified institution" means—

(A)(i) a bank (as defined in section 581),

(ii) a mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar institution under Federal or State law, or

(iii) a credit union, the deposits or accounts of which are insured under Federal or State law or are protected or guaranteed under State law, or

(B) an industrial loan association or bank chartered and supervised under Federal or State law in a manner similar to a savings and loan institution.

The term "qualified institution" does not include any foreign branch or international banking facility of an institution described in the preceding sentence and such a branch or facility shall not be taken into account under subsection (d).

(3) LIMITATION ON QUALIFIED INTEREST EXPENSES, ETC.—

(A) LIMITATION.—The amount of the qualified interest expense of any taxpayer for any taxable year shall not exceed such taxpayer's excess itemized deductions (as defined in section 63(c)).

(B) COORDINATION WITH OTHER PROVISIONS.—For purposes of sections 37, 43, 85, 105(d), 170(b), and 213, adjusted gross income shall be determined without regard to the exclusion provided by this section.

(d) INSTITUTIONS REQUIRED TO PROVIDE RESIDENTIAL PROPERTY FINANCING.—

(1) IN GENERAL.—If a qualified savings institution (other than an institution described in subsection (c)(2)(A)(iii)) issues any depository institution tax-exempt savings certificate during any calendar quarter, the amount of the qualified residential financing provided by such institution shall during the succeeding calendar quarter not be less than the lesser of—

(A) 75 percent of the face amount of depository institution tax-exempt savings certificates issued during the calendar quarter, or

(B) 75 percent of the qualified net savings for the calendar quarter.

The aggregate amount of qualified tax-exempt savings certificates issued by any institution described in subsection (c)(2)(A)(iii) which are outstanding at the close of any calendar quarter may not exceed the limitation determined under paragraph (4) with respect to such institution for such quarter.

(2) PENALTY FOR FAILURE TO MEET REQUIREMENTS.—If, as of the close of any calendar quarter, a qualified institution has not met the requirements of paragraph (1) with respect to the preceding calendar quarter, such institution may not issue any certificates until it meets such requirements.

(3) QUALIFIED RESIDENTIAL FINANCING.—The term "qualified residential financing" includes, and is limited to—

(A) any loan secured by a lien on a single-family or multifamily residence,

(B) any secured or unsecured qualified home improvement loan (within the meaning of section 103A(1)(6) without regard to the $15,000 limit),

(C) any mortgage (within the meaning of section 103A(l)(1)) on a single-family or multifamily residence which is insured or guaranteed by the Federal, State, or local government or any instrumentality thereof,

(D) any loan to acquire a mobile home,

(E) any construction loan for the construction or rehabiltation of a single-family or multifamily residence,

(F) the purchase of mortgages secured by single-family or multifamily residences on the secondary market but only to the extent the amount of such purchases exceed[s] the amount of sales of such mortgages by an institution,

(G) the purchase of securities issued or guaranteed by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or securities issued by any other person if such securities are secured by mortgages originated by a qualified institution, but only to the extent the amount of such purchases exceed the amount of sales of such securities by an institution, and

(H) any loan for agricultural purposes.

For purposes of this paragraph, the term "single-family residence" includes 2-, 3-, and 4-family residences, and the term "residence" includes stock in a cooperative housing corporation (as defined in section 216(b)).

(4) LIMITATION FOR CREDIT UNIONS.—For purposes of paragraph (1), the limitation determined under this paragraph with

respect to any institution described in subsection (c)(2)(A)(iii) for any calendar quarter is the sum of—

(A) the aggregate of the amounts described in subparagraph (A) of paragraph (5) with respect to such institution as of September 30, 1981, plus

(B) 10 percent of the excess of—

(i) the aggregate of such amounts as of the close of such calendar quarter, over

(ii) the amount referred to in subparagraph (A).

For purposes of this paragraph, the amounts described in subparagraph (A) of paragraph (5) shall include amounts paid into credit union share accounts.

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SEC. 129. DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) IN GENERAL.—* * *

* * * * * * *

(d) DEPENDENT CARE ASSISTANCE PROGRAM.—

(1) IN GENERAL.—For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through [(6)] *(7)* of this subsection.

(2) DISCRIMINATION.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

[(2)] *(3)* ELIGIBILITY.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of [employees who are officers, owners, or highly compensated, or their dependents] *employees described in paragraph (2), or their dependents.* For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

[(3)] *(4)* PRINCIPAL SHAREHOLDERS OR OWNERS.—Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

[(4)] *(5)* NO FUNDING REQUIRED.—A program referred to in paragraph (1) is not required to be funded.

[(5)] *(6)* Notification of eligible employees.—Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

[(6)] *(7)* Statement of expenses.—The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(e) Definitions and Special Rules.—For purposes of this section—

(1) Dependent care assistance.—The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 44A(c)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income.—The term "earned income" shall have the meaning given such term in section 43(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable.—A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowable of excluded amounts as credit or deductions.—No deduction or credit shall be allowed *to the employee* under any other section of this chapter for any amount excluded from [income] *the gross income of the employee* by reason of this section.

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec. 161. Allowance of deductions.
Sec. 162. Trade or business expenses.
Sec. 163. Interest.
Sec. 164. Taxes.
Sec. 165. Losses.
Sec. 166. Bad debts.
Sec. 167. Depreciation.
Sec. 168. Accelerated cost recovery system.
Sec. 169. Amortization of pollution control facilities.
Sec. 170. Charitable, etc., contributions and gifts.
Sec. 171. Amortizable bond premium.
Sec. 172. Net operating loss deduction.
Sec. 173. Circulation expenditures.
Sec. 174. Research and experimental expenditures.
Sec. 175. Soil and water conservation expenditures.
Sec. 176. Payments with respect to employees of certain foreign corporations.
Sec. 177. Trademark and trade name expenditures.
Sec. 178. Depreciation or amorization of improvements made by lessee on lessor's property.
Sec. 180. Expenditures by farmers for fertilizer, etc.
Sec. 182. Expenditures by farmers for clearing land.
Sec. 183. Activities not engaged in for profit.
Sec. 184. Amortization of certain railroad rolling stock.
Sec. 185. Amortization of railroad grading and tunnel bores.
Sec. 186. Recoveries of damages for antitrust violations, etc.
Sec. 188. Amortization of certain expenditures for child care facilities.
Sec. 189. Amortization of real property construction period interest and taxes.
Sec. 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
Sec. 191. Amortization of certain rehabilitation expenditures for certified historic structures.
Sec. 192. Contributions to black lung benefit trust.
Sec. 193. Tertiary injectants.
[Sec. 194. Contributions to employer liability trusts.]
Sec. 194A. Contributions to employer liability trusts.
Sec. 194. Amortization of reforestation expenditures.
Sec. 195. Start-up expenditures.

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction for any taxable year the amount determined under this section with respect to recovery property.

(b) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—* * *

(2) 15-YEAR REAL PROPERTY.—

(A) IN GENERAL.—In the case of 15-year real property, the applicable percentage shall be determined in accordance with a table prescribed by the Secretary. In prescribing such table, the Secretary shall—

(i) assign to the property a 15-year recovery period, and

(ii) assign percentages generally determined in accordance with use of the 175 percent declining balance method (200 percent declining balance method in the case of low-income housing), switching to the method described in section 167(b)(1) at a time to maximize the deduction allowable under subsection (a).

[For purposes of this subparagraph] *In the case of 15-year real property,* the applicable percentage in the taxable year in which the property is placed in service shall be determined on the basis of the number of months in such year during which the property was in service. For purposes of this subparagraph, the term "low-income housing" means property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B).

(B) SPECIAL RULE FOR YEAR OF DISPOSITION.—In the case of a disposition of 15-year real property, the deduction allowable under subsection (a) for the taxable year in which the disposition occurs shall reflect only the months during such year the property was in service.

(3) ELECTION OF DIFFERENT RECOVERY PERCENTAGE.—

(A) IN GENERAL.—Except as provided in subsection (f)(2), in lieu of any applicable percentage under paragraphs (1) and (2), the taxpayer may elect, with respect to one or more classes of recovery property placed in service during the taxable year, the applicable percentage determined by use of the straight line method over the recovery period elected by the taxpayer in accordance with the following table:

In the case of:	The taxpayer may elect a recovery period of:
3-year property	3, 5, or 12 years.
5-year property	5, 12, or 25 years.
10-year property	10, 25, or 35 years.
15-year real property	15, 35, or 45 years.
15-year public utility property	15, 35, or 45 years.

(B) OPERATING RULES.—

(i) IN GENERAL.—Except as provided in clause (ii), the taxpayer may elect under subparagraph (A) only a single percentage for property in any class of recovery property placed in service during the taxable year. The percentage so elected shall apply to all property in such class placed in service during such taxable year and shall apply throughout the recovery period elected for such property.

(ii) REAL PROPERTY.—In the case of 15-year real property the taxpayer shall make the election under subparagraph (A) on a property-by-property basis.

(iii) CONVENTION.—Under regulations prescribed by the Secretary, the half-year convention shall apply to any election with respect to any recovery property (other than 15-year real property) with respect to which an election is made under this paragraph.

(c) RECOVERY PROPERTY.—For purposes of this title—

(1) RECOVERY PROPERTY DEFINED.—Except as provided in subsection (e), the term "recovery property" means tangible property of a character subject to the allowance for depreciation—

(A) used in a trade or business, or

(B) held for the production of income.

(2) CLASSES OF RECOVERY PROPERTY.—Each item of recovery property shall be assigned to one of the following classes of property:

(A) 3-YEAR PROPERTY.—The term "3-year property" means section 1245 class property—

(i) with a present class life of 4 years or less; or

(ii) used in connection with research and experimentation.

(B) 5-YEAR PROPERTY.—The term "5-year property" means recovery property which is section 1245 class property and which is not 3-year property, 10-year property, or 15-year public utility property.

(C) 10-YEAR PROPERTY.—The term "10-year property" means—

(i) public utility property (other than section 1250 class property or 3-year property) with a present class life of more than 18 years but not more than 25 years; and

(ii) section 1250 class property with a present class life of 12.5 years or less.

(D) 15-YEAR REAL PROPERTY.—The term "15-year real property" means section 1250 class property which does not have a present class life of 12.5 years or less.

(E) 15-YEAR PUBLIC UTILITY PROPERTY.—The term "15-year public utility property" means public utility property (other than section 1250 class property or 3-year property) with a present class life of more than 25 years.

(F) SPECIAL RULE FOR THEME PARKS, ETC.—For purposes of subparagraphs (C) and (D), a building (and its structural components) shall not be treated as having a present class life of 12.5 years or less by reason of any use other than the use for which such building was originally placed in service.

(d) UNADJUSTED BASIS; ADJUSTMENTS.—

(1) UNADJUSTED BASIS DEFINED.—

(A) IN GENERAL.—For purposes of this section, the term "unadjusted basis" means the excess of—

(i) the basis of the property determined under part II of subchapter O of chapter 1 for purposes of determining gain (determined without regard to the adjustments described in paragraph (2) or (3) of section 1016(a)), over

(ii) the sum of—

(I) that portion of the basis for which the taxpayer property elects amortization (including the deduction allowed under section 167(k)) in lieu of depreciation, and

(II) that portion of the basis which the taxpayer properly elects to treat as an expense under section 179.

(B) TIME FOR TAKING BASIS INTO ACCOUNT.—

(i) IN GENERAL.—The unadjusted basis of property shall be first taken into account under subsection (b) for the taxable year in which the property is placed in service.

(ii) REDETERMINATIONS.—The Secretary shall by regulation provide for the method of determining the deduction allowable under subsection (a) for any taxable year (and succeeding taxable years) in which the basis is redetermined (including any reduction under section 1017).

(2) DISPOSITIONS.—

(A) MASS ASSET ACCOUNTS.—In lieu of recognizing gain or loss under this chapter, a taxpayer who maintains one or more mass asset accounts of recovery property may, under regulations prescribed by the Secretary, elect to include in income all proceeds realized on the disposition of such property.

(B) ADJUSTMENT TO BASIS.—Except as provided under regulations prescribed by the Secretary under [subsection (f)(7)] *paragraph (7) or (10) of subsection (f),* if any recovery property (other than 15-year real property or property with respect to which an election under subparagraph (A) is made) is disposed of, the unadjusted basis of such property shall cease to be taken into account in determining any recovery deduction allowable under subsection (a) as of the beginning of the taxable year in which such disposition occurs.

(C) DISPOSITION INCLUDES RETIREMENT.—For purposes of this subparagraph, the term "disposition" includes retirement.

* * * * * * *

(f) SPECIAL RULES FOR APPLICATION OF THIS SECTION.—For purposes of this section—

(1) COMPONENTS OF SECTION 1250 CLASS PROPERTY.—

* * * * * * *

(4) MANNER AND TIME FOR MAKING ELECTIONS.—

(A) IN GENERAL.—Any election under this section shall be made for the taxable year in which the property is placed in service.

[(B) MADE ON RETURN.—Any election under this section shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable concerned.]

(B) ELECTION MADE ON RETURN.—

(i) IN GENERAL.—Except as provided in clause (ii), any election under this section shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year concerned.

(ii) ***SPECIAL RULE FOR QUALIFIED REHABILITATED BUILDINGS.****—In the case of any qualified rehabilitated building (as defined in section 48(g)(1)), an election under subsection (b)(3) may be made at any time before the date 3 years after the building was placed in service.*

(C) **REVOCATION ONLY WITH CONSENT.**—Any election under this section, once made, may be revoked only with the consent of the Secretary.

(5) **SHORT TAXABLE YEARS.**—In the case of a taxable year that is less than 12 months, the amount of the deduction under this section shall be an amount which bears the same relationship to the amount of the deduction, determined without regard to this paragraph, as the number of months in the short taxable year bears to 12. In such case, the amount of the deduction for subsequent taxable years shall be appropriately adjusted in accordance with regulations prescribed by the Secretary. The determination of when a taxable year begins shall be made in accordance with regulations prescribed by the Secretary. This paragraph shall not apply to any deduction with respect to any property for the first taxable year of the lessor for which an election under paragraph (8) is in effect with respect to such property. *In the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.*

* * * * * * *

(12) ***CHANGES IN USE.****—The Secretary shall, by regulation, provide for the method of determining the deduction allowable under subsection (a) with respect to any property for any taxable year (and for succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.*

(g) **DEFINITIONS.**—For purposes of this section—

(1) **PUBLIC UTILITY PROPERTY.**—The term "public utility property" means property described in section 167(l)(3)(A).

(2) **PRESENT CLASS LIFE.**—The term "present class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1981, under subsection (m) of section 167 (determined without regard to paragraph (4) thereof and as if the taxpayer had made an election under such subsection).

(3) **SECTION 1245 CLASS PROPERTY.**—The term "section 1245 class property" means tangible property described in section 1245(a)(3) other than subparagraphs (C) and (D).

(4) **SECTION 1250 CLASS PROPERTY.**—The term "section 1250 class property" means property described in section 1250(c) and property described in section 1245(a)(3)(C).

(5) **RESEARCH AND EXPERIMENTATION.**—The term "research and experimentation" has the same meaning as the term research or experimental has under section 174.

(6) **RRB PROPERTY DEFINED.**—For purposes of this section, the term "RRB property" means property which under the taxpayer's method of depreciation before January 1, 1981, would have

been depreciated using the retirement-replacement-betterment method.

(7) MANUFACTURED HOMES.—The term "manufactured home" has the same meaning as in section 603(6) of the Housing and Community Development Act of 1974, which is 1250 class property used as a dwelling unit.

(8) QUALIFIED COAL UTILIZATION PROPERTY.—

[(A) IN GENERAL.—] *(A) QUALIFIED COAL UTILIZATION PROPERTY.*—The term "qualified coal utilization property" means that portion of the unadjusted basis of coal utilization property which bears the same ratio (but not greater than 1) to such unadjusted basis as—

(i) the Btu's of energy produced by the powerplant or major fuel-burning installation before the conversion or replacement involving coal utilization property, bears to

(ii) the Btu's of energy produced by such powerplant or installation after such conversion or replacement.

[(B) IN GENERAL.—] *(B) COAL UTILIZATION PROPERTY.*—The term "coal utilization property" means—

(i) a boiler or burner—

(I) the primary fuel for which is coal (including lignite), and

(II) which replaces an existing boiler or burner which is part of a powerplant or major fuel-burning installation and the primary fuel for which is oil or natural gas or any product thereof, and

(ii) equipment for converting an existing boiler or burner described in clause (i)(II) to a boiler or burner the primary fuel for which will be coal.

(C) POWERPLANT AND MAJOR FUEL-BURNING INSTALLATION.—The terms "powerplant" and "major fuel-burning installation" have the meanings given such terms by paragraphs (7) and (10) of section 103(a) of the Powerplant and Industrial Fuel Use Act of 1978, respectively.

(D) EXISTING BOILER OR BURNER.—The term "existing boiler or burner" means a boiler or burner which was placed in service before January 1, 1981.

(E) REPLACEMENT OF EXISTING BOILER OR BURNER.—A boiler or burner shall be treated as replacing a boiler or burner if the taxpayer certifies that the boiler or burner which is to be replaced—

(i) was used during calendar year 1980 for more than 2,000 hours of full load peak use (or equivalent thereof), and

(ii) will not be used for more than 2,000 hours of such use during any 12-month period after the boiler or burner which is to replace such boiler or burner is placed in service.

(h) SPECIAL RULES FOR RECOVERY PROPERTY CLASSES.—For purposes of this section—

(1) CERTAIN HORSES.—The term "3-year property" includes—

(A) any race horse which is more than 2 years old at the time such horse is placed in service; or

(B) any other horse which is more than 12 years old at such time.

(2) RAILROAD TANK CARS.—The term "10-year property" includes railroad tank cars.

(3) MANUFACTURED HOMES.—The term "10-year property" includes manufactured homes.

[(4) QUALIFIED COAL UTILIZATION PROPERTY.—The term "10-year property" includes qualified coal utilization property which is not 3-year property, 5-year property, or 10-year property (determined without regard to this paragraph).]

(4) QUALIFIED COAL UTILIZATION PROPERTY.—The term "10-year property" includes qualified coal utilization property which would otherwise be 15-year public utility property.

(5) APPLICATION WITH OTHER CLASSES.—Any property which is treated as included in a class or property by reason of this subsection shall not be treated as included in any other class.

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SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—* * *

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(h) QUALIFIED CONSERVATION CONTRIBUTION.—

(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) CONSERVATION PURPOSE DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Certified historic structure.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section [191(d)(2)] *48(g)(3)(B)* and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

* * * * * * *

SEC. 193. TERTIARY INJECTANTS.

(a) Allowance of Deduction.—There shall be allowed as a deduction for the taxable year an amount equal to the qualified tertiary injectant expenses of the taxpayer for tertiary injectants injected during such taxable year.

(b) Qualified Tertiary Injectant Expenses.—For purposes of this section—

(1) In general.—The term "qualified tertiary injectant expenses" means any cost paid or incurred [during the taxable year] (whether or not chargeable to capital account) for any tertiary injectant (other than a hydrocarbon injectant which is recoverable) which is used as a part of a tertiary recovery method.

* * * * * * *

SEC. [194.] *194A.* CONTRIBUTIONS TO EMPLOYER LIABILITY TRUSTS.

(a) Allowance of Deduction.—There shall be allowed as a deduction for the taxable year an amount equal to the amount—

(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and

(2) which is properly allocable to such taxable year.

(b) Allocation to Taxable Year.—In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

(c) Disallowance of Deduction.—No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

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PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

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SEC. 219. RETIREMENT SAVINGS.

(a) Allowance of Deduction.—In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum Amount of Deduction.—

(1) In general.—The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) $2,000, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rules for employer contributions under simplified employee pensions.—

(A) Limitation.—If there is an employer contribution on behalf of the employee to a simplified employee pension, an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under [paragraph (1)] *paragraph (1))* an amount equal to the lesser of—

(i) 15 percent of the compensation from such employer includible in the employee's gross income for the taxable year (determined without regard to the employer contribution to the simplified employee pension), or

(ii) the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of $15,000).

(B) Certain limitations do not apply to employer contribution.—Paragraph (1) of this subsection and paragraph (1) of subsection (d) shall not apply with respect to the employer contribution to a simplified employee pension.

* * * * * * *

(c) Special Rules for Certain Married Individuals.—

(1) In general.—In the case of any individual with respect to whom a deduction is otherwise allowable under subsection (a)—

(A) who files a joint return under section 6013 for a taxable year, and

(B) whose spouse has no compensation (determined without regard to section 911) for such taxable year,

there shall be allowed as a deduction any amount paid in cash for the taxable year by or on behalf of the individual to an individual retirement plan established for the benefit of his spouse.

(2) LIMITATION.—The amount allowable as a deduction under paragraph (1) shall not exceed the excess of—

(A) the lesser of—

(i) $2,250, or

(ii) an amount equal to the compensation includible in the individual's gross income for the taxable year, over

[(B) the amount allowed as a deduction under subsection (a) for the taxable year.]

(B) the amount allowable as a deduction under subsection (a) for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b)).

In no event shall the amount allowable as a deduction under paragraph (1) exceed $2,000.

(d) OTHER LIMITATIONS AND RESTRICTIONS.—

[(1) INDIVIDUALS WHO HAVE ATTAINED AGE 70½.—No deduction shall be allowed under this section with respect to any qualified retirement contribution which is made for a taxable year of an individual if such individual has attained age 70½ before the close of such taxable year.]

(1) BENEFICIARY MUST BE UNDER AGE 70½.—No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

(2) RECONTRIBUTED AMOUNTS.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), 408(d)(3), or 409(b)(3)(C).

(3) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(e) DEFINITION OF RETIREMENT SAVINGS CONTRIBUTIONS, ETC.—For purposes of this section—

(1) QUALIFIED RETIREMENT CONTRIBUTION.—The term "qualified retirement contribution" means—

(A) any qualified voluntary employee contribution paid in cash by the individual for the taxable year, and

(B) any amount paid in cash for the taxable year by or on behalf of such individual for his benefit to an individual retirement plan.

For purposes of the preceding sentence, the term "individual retirement plan" includes a retirement bond described in section 409 only if the bond is not redeemed within 12 months of its issuance.

(2) QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTION.—

(A) IN GENERAL.—The term "qualified voluntary employee contribution" means any voluntary contribution—

(i) which is made by an individual as an employee under a qualified employer plan or government plan, which plan allows an employee to make contributions which may be treated as qualified voluntary employee contributions under this section, and

(ii) with respect to which the individual has not designated such contribution as a contribution which should not be taken into account under this section.

(B) VOLUNTARY CONTRIBUTION.—For purposes of subparagraph (A), the term "voluntary contribution" means any contribution which is not a mandatory contribution (within the meaning of section 411(c)(2)(C)).

(C) DESIGNATION.—For purposes of determining whether or not an individual has made a designation described in subparagraph (A)(ii) with respect to any contribution during any calendar year under a qualified employer plan or government plan, such individual shall be treated as having made such designation if he notifies the plan administrator of such plan, not later than the earlier of—

(i) April 15 of the succeeding calendar year, or

(ii) the time prescribed by the plan administrator,

that the individual does not want such contribution taken into account under this section. Any designation or notification referred to in the preceding sentence shall be made in such manner as the Secretary shall by regulations prescribe and, after the last date on which such designation or notification may be made, shall be irrevocable for such taxable year.

(3) QUALIFIED EMPLOYER PLAN.—The term "qualified employer plan" means—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) a qualified bond purchase plan described in section 405(a), *and*

[(D) a simplified employee pension (within the meaning of section 408(k)), and]

[(E)] *(D)* a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(4) GOVERNMENT PLAN.—The term "government plan" means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) PAYMENTS FOR CERTAIN PLANS.—The term "amounts paid to an individual retirement plan" includes amounts paid for an individual retirement annuity or a retirement bond.

(f) OTHER DEFINITIONS AND SPECIAL RULES.—

[(1) COMPENSATION.—For purposes of this section, the term "compensation" includes earned income as defined in section 401(c)(2).]

(1) Compensation.—For purposes of this section, the term "compensation" includes earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62. The term "compensation" does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation.

(2) Married individuals.—The maximum deduction under subsections (b) and (c) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.

(3) Time when contributions deemed made.—

(A) Individual retirement plans.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made no later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(B) Qualified employer or government plans.—For purposes of this section, if a qualified employer or government plan elects to have the provisions of this subparagraph apply, a taxpayer shall be deemed to have made a voluntary contribution to such plan on the last day of the preceding calendar year (if, without regard to this paragraph, such contribution may be made on such date) if the contribution is made *on account of the taxaable year which includes such last day and* by April 15th of the calendar year or such earlier time as provided by the plan administrator.

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SEC. 222. ADOPTION EXPENSES.

(a) Allowance of Deduction.—* * *

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(c) Definitions.—For purposes of this section—

(1) Qualified adoption expenses.—The term "qualified adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs by the taxpayer and which are not incurred in violation of State or Federal law.

[(2) Child with special needs.—The term "child with special needs" means a child with respect to whom adoption assistance payments are made under section 473 of the Social Security Act.**]**

(2) Child with special needs.—The term "child with special needs" means any child determined by the State to be a child described in paragraphs (1) and (2) of section 473(c) of the Social Security Act.

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart A—Effects on Recipients

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SEC. 305. DISTRIBUTIONS OF STOCK AND STOCK RIGHTS.

(a) GENERAL RULE.—* * *

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(e) DIVIDEND REINVESTMENT IN STOCK OF PUBLIC UTILITIES.—

(1) IN GENERAL.—Subsection (b) shall not apply to any qualified reinvested dividend.

(2) QUALIFIED REINVESTED DIVIDEND DEFINED.—For purposes of this subsection, the term "qualified reinvested dividend" means—

(A) a distribution by a qualified public utility of shares of its qualified common stock to an individual with respect to the common or preferred stock of such corporation pursuant to a plan under which shareholders may elect to receive dividends in the form of stock instead of property, but

(B) only if the shareholder elects to have this subsection apply to such shares.

(3) QUALIFIED PUBLIC UTILITY DEFINED.—

[(A) IN GENERAL.—For purposes of this subsection, the term "qualified public utility" means, for any taxable year of the corporation, a domestic corporation which, for the 10-year period ending on the day before the beginning of the taxable year, acquired public utility recovery property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in section 1245(a)(3) (other subparagraphs (C) and (D) thereof) acquired by the corporation during such period.**]**

(A) IN GENERAL.—For purposes of this subsection, the term "qualified public utility" means, for any taxable year of the corporation, a domestic corporation which, for the 10-year period ending on the day before the beginning of the taxable year, placed in service qualified long-life public utility property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in subparagraph (A) or (B) of section 1245(a)(3) placed in service by the corporation during such period.

(B) SPECIAL RULES.—For purposes of subparagraph (A)—

(i) all members of an affiliated group shall be treated as one corporation,

(ii) a successor corporation shall take into account the acquisition of its predecessor, and

(iii) a new corporation to which clause (ii) does not apply shall substitute its period of existence for the 10-year period set forth in subparagraph (A).

(C) Definitions.—For purposes of this paragraph—

(i) Affiliated group.—The term "affiliated group" has the meaning given to such term by subsection (a) of section 1504 (determined without regard to subsection (b) of section 1504).

[(ii) Public utility recovery property.—The term "public utility recovery property" means public utility property (within the meaning of section 167(l)(3)(A)) which is recovery property which is 10-year property or 15-year public utility property (within the meaning of section 168), except that any requirement that the property be placed in service after December 31, 1980, shall not apply.]

(ii) Qualified long-life public utility property.—The term "qualified long-life public utility property" means any tangible property which—

(I) is described in subparagraph (A) or (B) of section 1245(a)(3),

(II) has a present class life (as defined in section 168(g)(2)) of more than 18 years, and

(III) is public utility property (within the meaning of section 167(l)(3)(A)).

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PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

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Subpart D—Special Rule; Definitions

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SEC. 368. DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS.

(a) Reorganization.—

(1) In general.—For purposes of parts I and II and this part, the term "reorganization" means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) SPECIAL RULES RELATING TO PARAGRAPH (1).—

(A) REORGANIZATIONS DESCRIBED IN BOTH PARAGRAPH (1)(C) AND PARAGRAPH (1)(D).—If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter, such transaction shall be treated as described only in paragraph (1)(D).

(B) ADDITIONAL CONSIDERATION IN CERTAIN PARAGRAPH (1)(C) CASES.—If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C). TRANSFERS OF ASSETS OR STOCK TO SUBSIDIARIES IN CERTAIN PARAGRAPH (1)(A), (1)(B), (1)(C), AND (1)(G) CASES.—A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets [or stock] which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

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PART V—CARRYOVERS

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SEC. 381. CARRYOVERS IN CERTAIN CORPORATE ACQUISITIONS.

(a) GENERAL RULE.—* * *

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(c) ITEMS OF THE DISTRIBUTOR OR TRANSFEROR CORPORATION.—The items referred to in subsection (a) are:

(1) NET OPERATING LOSS CARRYOVERS.—* * *

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[(28)] *(29)* CREDIT UNDER SECTION 44F.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section 44F, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44F in respect of the distributor or transferor corporation.

[(29)] *(30)* CREDIT UNDER SECTION 44G.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 44G, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44G in respect of the distributor or transferor corporation.

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Subchapter D—Deferred Compensation, Etc.

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PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart A—General Rule

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SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(21) A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit [which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1.)] *which would be allowable—*

(A) under section 46(a) if the employer made the transfer described in section 48(n)(1), or

(B) under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

* * * * * * *

(d) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1) * * *

* * * * * * *

(5) The plan does not permit—

(A) contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year;

(B) in the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year; and

(C) if a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m)(5)(A)(i), contributions to be made on behalf of such employee for the 5 taxable years succeeding the taxable year in which such distribution is made.

[Subparagraphs (A) and (B) do not apply to contributions described in subsection (e). Subparagraph (C) shall not apply to a distribution on account of the termination of the plan.] *Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(o)(5)).*

* * * * * * *

(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

(1) IN GENERAL.—A defined benefit plan satisfies the requirments of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c)(1) (or a sharehold-

er-employee) is permissible under regulations prescribed by the Secretary under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

(A) defined contribution plans,

(B) defined benefit plans, and

(C) a combination of defined contribution plans and defined benefit plans.

(2) GUIDELINES FOR REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

(A) his annual compensation (not in excess of $100,000) for such year, and

(B) the applicable percentage determined under paragraph (3).

(3) APPLICABLE PERCENTAGE.—

(A) TABLE.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown in the following table opposite his age when his current period of participation in the plan began.

Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

(i) for applicable percentages for ages between any two ages shown on the table,

(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

(iii) that any increase in the rate of accural, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

For purposes of this paragraph, a change in the annual compensation taken into account under subparagraph (A) of [subsection (j)(2)] *paragraph (2)* shall be treated as beginning a new period of plan participation *with respect only to such change.*

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

(1) GENERAL RULE.—* * *

* * * * * * *

(5) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions (other than accumulated deductible employee contributions within the meaning of section 72(o)(5)).

(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term "qualifying rollover distribution" means 1 or more distributions—

(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan,

(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subparagraphs (B) and (H) of subsection (e)(4)), or

(III) which constitute a distribution of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(ii) EMPLOYEE CONTRIBUTIONS.—The term "employee contributions" means—

(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

(II) any amounts theretofore distributed to the employee which were not includible in gross income.

(iii) QUALIFIED TRUST.—The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iv) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" means—

(I) an individual retirement account described in section 408(a),

(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(III) a retirement bond described in section 409,

(IV) a qualified trust, and

(V) an annuity plan described in section 403(a).

(v) ROLLOVER OF PARTIAL DISTRIBUTIONS OF DEDUCTIBLE EMPLOYEE CONTRIBUTIONS PERMITTED.—In the case of any qualifying rollover distribution described in subclause (III) of clause (i), clause (i) of subparagraph (A) shall be applied by substituting "any portion of the balance" for "the balance".

* * * * * * *

(e) TAX ON LUMP SUM DISTRIBUTIONS.—

(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sun distribution.

(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to **[**$2,300**]** *the zero bracket amount applicable to such an individual for the taxable year* plus one-tenth of the excess of—

(i) the total taxable amount of the lump sum distribution for the taxable year, over

(ii) the minimum distribution allowance.

(D) **Minimum distribution allowance.**—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

(E) **Liability for tax.**—The recipient shall be liable for the tax imposed by this paragraph.

(2) **Multiple distributions and distributions of annuity contracts.**—In case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

(A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trust according to the relative amounts received by each. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

(3) **Allowance of deduction.**—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

(4) **Definitions and special rules.**—

(A) **Lump sum distribution.**—For purposes of this section and section 403, the term "lump sum distribution" means the distribution of payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipent—

(i) on account of the employee's death,

(ii) after the employee attains age 59½,

(iii) on account of the employee's separation from the service, or

(iv) after the employee has become disabled (within the meaning of section 72(m)(7))

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). Except for purposes of subsection (a)(2) and section 403(a)(2), a distribution of an annunity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trust shall be treated as a distribution to one recipient. For purposes of **[**this section and section 403**]** *this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403,* the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

* * * * * * *

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) Taxability of Beneficiary Under a Qualified Annuity Plan.—* * *

(b) Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—

(1) General rule.—* * *

* * * * * * *

(8) Rollover amounts.—

(A) General rule.—If—

(i) the balance to the credit of an employee is paid to him in a qualifying distribution,

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Qualifying distribution defined.—

(i) In general.—For purposes of subparagraph (A), the term "qualifying distribution" means 1 or more distributions from an annuity contract described in paragraph (1) which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(ii) Aggregation of annuity contracts.—For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply.

(C) Certain rules made applicable.—Rules similar to the rules of subparagraphs (B), (C), *(D)(v),* and (E)(i) of section 402(a)(5) and of paragraphs (6) and (7) of section 702(a) shall apply for purposes of subparagraph (A).

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SEC 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) Individual Retirement Account.—* * *

* * * * * * *

(j) Increase in Maximum Limitations for Simplified Employee Pensions.—In the case of a simplified employee pension, this section shall be applied by substituting **[**“$15,000”**]** *“$17,000”* for “2,000” in the following provisions:

(1) paragraph (1) of subsection (a), and

(2) paragraph (2) of subsection (b).

(k) Simplified Employee Pension Defined.—

(1) In general.—For purposes of this title, the term “simplified employee pension” means an individual retirement account or individual retirement annuity with respect to which the requirements of paragraphs (2), (3), (4), (5), and (6) of this subsection are met.

(2) Participation requirements.—This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 25, and

(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(3) Contributions may not discriminate in favor of the highly compensated, etc.—

(A) In general.—The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any employee who is—

(i) an officer,

(ii) a shareholder,

(iii) a self-employed individual, or

(iv) highly compensated.

(B) SPECIAL RULES.—For purposes of subparagraph (A)—

(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more then 10 percent of the value of the stock of the employer.

(C) CONTRIBUTIONS MUST BEAR A UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), employer contributions to simplified employee pensions shall be considered discriminatory unless—

(i) contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension, and

(ii) if compensation in excess of $100,000 is taken into account under a simplified employee pension for an employee, contributions to a simplified employee pension on behalf of each employee *(other than an employee within the meaning of section 401(c)(1))* for whom a contribution is required are at a rate (expressed as a percentage of compensation) not less than 7.5 percent.

* * * * * * *

[(n)] *(m)* INVESTMENT IN COLLECTIBLES TREATED AS DISTRIBUTIONS.—

(1) IN GENERAL.—The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) COLLECTIBLE DEFINED.—For purposes of this subsection, the term "collectible" means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

* * * * * * *

SEC. 409a. QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN DEFINED.— * * *

* * * * * * *

(d) EMPLOYER SECURITIES MUST STAY IN THE PLAN.—A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, or separation from service;

[(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of—

[(A) a sale to the acquiring employer of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

[(B) the sale of substantially all of the stock of a subsidiary of the employer, or]

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

* * * * * * *

(h) RIGHT TO DEMAND EMPLOYER SECURITIES; PUT OPTION.—

(1) IN GENERAL.—A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) PLAN MAY DISTRIBUTE CASH IN CERTAIN CASES.—A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities. In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet [the requirements of section 401(a)] *the requirements of this subsection or of section 401(a)* merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash.

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PART II—CERTAIN STOCK OPTIONS

* * * * * * *

SEC. 422A. INCENTIVE STOCK OPTIONS.

(a) In General.—* * *

* * * * * * *

(b) Incentive Stock Option.—For purposes of this part, the term "incentive stock option" means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him;

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation;

(7) such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(7)) any incentive stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations; and

(8) in the case of an option granted after December 31, 1980, under the terms of the plan the aggregate fair market value (determined as of the time the option is granted) of the stock for which any employee may be granted *incentive stock* options in any calendar year (under all such plans of his employer corporation and its parent and subsidiary corporation) shall not exceed $100,000 plus any unused limit carryover to such year.

(c) Special Rules.—

[(1) Exercise of option when price is less than value of stock.—**]** *(1) Good faith efforts to value stock.*—If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. *To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of paragraph (8) of subsection (b) and paragraph (4) of this subsection.*

(2) CERTAIN DISQUALIFYING DISPOSITIONS WHERE AMOUNT REALIZED IS LESS THAN VALUE AT EXERCISE.—If—

(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within [the 2-year period] *either of the periods* described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(3) CERTAIN TRANSFERS BY INSOLVENT INDIVIDUALS.—If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or any other similar fiduciary in any proceeding under title 11 or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).

(4) CARRYOVER OF UNUSED LIMIT.—

(A) IN GENERAL.—If—

(i) $100,000 exceeds,

(ii) the aggregate fair market value (determined as of the time the option is granted) of the stock for which an employee was granted *incentive stock* options in any calendar year after 1980 (under all plans described in subsection (b) of his employer corporation and its parent and subsidiary corporations),

one-half of such excess shall be unused limit carryover to each of the 3 succeeding calendar years.

(B) AMOUNT CARRIED TO EACH YEAR.—The amount of the unused limit carryover from any calendar year which may be taken into account in any succeeding calendar year shall be the amount of such carryover reduced by the amount of such carryover which was used in prior calendar years.

(C) SPECIAL RULES.—For purposes of subparagraph (B)—

(i) the amount of options granted during any calendar year shall be treated as first using up the $100,000 limitation of subsection (b)(8), and

(ii) then shall be treated as using up unused limit carryovers to such year in the order of the calendar years in which the carryovers arose.

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SEC. 425. DEFINITIONS AND SPECIAL RULES.

(a) CORPORATE REORGANIZATIONS, LIQUIDATIONS, ETC.—* * *

* * * * * * *

(c) DISPOSITION.—

(1) IN GENERAL.—Except as provided in [paragraph (2)] *paragraphs (2) and (3),* for purposes of this part, the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by bequest or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) JOINT TENANCY.—The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated

(3) SPECIAL RULE WHERE INCENTIVE STOCK IS ACQUIRED THROUGH USE OF OTHER STATUTORY OPTION STOCK.—

(A) NONRECOGNITION SECTIONS NOT TO APPLY.—If—

(i) there is a transfer of statutory option stock in connection with the exercise of any incentive stock option, and

(ii) the applicable holding period requirements (under section 422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)) are not met before such transfer,

then no section referred to in subparagraph (B) of paragraph (1) shall apply to such transfer.

(B) STATUTORY OPTION STOCK.—For purpose of subparagraph (A), the term "statutory option stock" means any stock acquired through the exercise of a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option.

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(j) CROSS REFERENCES.—

For provisions requiring the reporting of certain acts with respect to a qualified stock option, *an incentive stock option,* options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

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Subchapter E—Accounting Periods and Methods of Accounting

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PART I—ACCOUNTING PERIODS

*   *   *   *   *   *   *

SEC. 443. RETURNS FOR A PERIOD OF LESS THAN 12 MONTHS.

(a) Returns for Short Period.—* * *

*   *   *   *   *   *   *

(e) Cross References.—

For inapplicability of subsection (b) in computing—

(1) Accumulated earnings tax, see section 536.

(2) Personal holding company tax, see section 546.

(3) Undistributed foreign personal holding company income, see section 557.

(4) The taxable income of a regulated investment company, see section 852(b)(2)(E).

(5) The taxable income of a real estate investment trust, see section 857(b)(2)(C).

For returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year, see **[**section 1398(d)(3)(E)**]** *section 1398(d)(2)(E).*

*   *   *   *   *   *   *

PART II—METHODS OF ACCOUNTING

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Subpart B—Taxable Year for Which Items of Gross Income Included

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SEC. 453. INSTALLMENT METHOD.

(a) General Rule.—* * *

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(f) Definitions and Special Rules.—For purposes of this section—

(1) Related person.—Except for purposes of subsections (g) and (h), the term "related person" means a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property.

(2) Marketable securities.—The term "marketable securities" means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

(3) Payment.—Except as provided in paragraph (4), the term "payment" does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

(4) PURCHASER EVIDENCES OF INDEBTEDNESS PAYABLE ON DEMAND OR READILY TRADABLE.—Receipt of a bond or other evidence of indebtedness which—

(A) is payable on demand, or

(B) is issued by a corporation or a government or political subdivision thereof and is readily tradable,

shall be treated as receipt of payment.

(5) READILY TRADABLE DEFINED.—For purposes of paragraph (4), the term "readily tradable" means a bond or other evidence of indebtedness which is issued—

(A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or

(B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

(6) LIKE-KIND EXCHANGES.—In the case of any exchange described in section 1031(b)—

(A) the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,

(B) the gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of section 1031(b), and

(C) the term "payment", *when used in any provision of this section other than subsection (b)(1),* shall not include any property permitted to be received in such exchange without recognition of gain.

Similar rules shall apply in the case of an exchange which is described in section 356(a) and is not treated as a dividend.

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SEC. 453B. GAIN OR LOSS DISPOSITION OF INSTALLMENT OBLIGATIONS.

(a) GENERAL RULE.—* * *

* * * * * * *

(d) EFFECT OF DISTRIBUTION IN CERTAIN LIQUIDATIONS.—

(1) LIQUIDATIONS TO WHICH SECTION 332 APPLIES.—If—

(A) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

(B) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation.

(2) LIQUIDATIONS TO WHICH SECTION 337 APPLIES.—If—

(A) an installment obligation is distributed by a corporation in the course of a liquidation, and

(B) under section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution, then no gain or loss shall be recognized to such corporation by reason of such distribution. The preceding sentence shall not apply to the extent that under [paragraph (1)] *subsection (a)* gain to the distributing corporation would be considered as gain to which section 341(f), 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a) applies. In the case of any installment obligation which would have met the requirements of subparagraphs (A) and (B) of the first sentence of this paragraph but for section 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under section 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

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PART III—ADJUSTMENTS

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SEC. 483. INTEREST ON CERTAIN DEFERRED PAYMENTS.

(a) AMOUNT CONSTITUTING INTEREST.—* * *

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(g) MAXIMUM RATE OF INTEREST ON CERTAIN TRANSFERS OF LAND BETWEEN RELATED PARTIES.—

(1) IN GENERAL.—In the case of any qualified sale, the maximum interest rate used in determining the total unstated interest rate under the regulations under subsection (b) shall not exceed 7 percent, compounded semiannually.

(2) QUALIFIED SALE.—For purposes of this subsection, the term "qualified sale" means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

(3) $500,000 LIMITATION.—Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

(4) NONRESIDENT ALIEN INDIVIDUALS.—[This section] *Paragraph (1)* shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

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Subchapter F—Exempt Organizations

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PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

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SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) DEFINITIONS.—* * *

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(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraphs (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains on the lapse or termination of options, written by the organization in connection with its investment activities, to buy or sell securities (as defined in section 1236(c)). This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed [5 percent] *10 percent* of the unrelated business taxable income computed without the benefit of this paragraph.

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Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

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PART II—PERSONAL HOLDING COMPANIES

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SEC. 545. UNDISTRIBUTED PERSONAL HOLDING COMPANY INCOME.

(a) DEFINITION.—For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) TAXES.—There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the [5-percent] *10-percent* limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

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PART III—FOREIGN PERSONAL HOLDING COMPANIES

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SEC. 556. UNDISTRIBUTED FOREIGN PERSONAL HOLDING COMPANY INCOME.

(a) DEFINITION.—For purposes of this part, the term "undistributed foreign personal holding company income" means the taxable income of a foreign personal holding company adjusted in the manner provided in subsection (b), minus the dividends paid deduction (as defined in section 561).

(b) ADJUSTMENTS TO TAXABLE INCOME.—For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) TAXES.—There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year, but not including the accumulated earnings tax imposed by section 531,

the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law. A taxpayer which, for each taxable year in which it was subject to the provisions of supplement P of the Internal Revenue Code of 1939, deducted Federal income and excess profits taxes when paid for the purpose of computing undistributed supplement P net income under such Code, shall deduct taxes under this paragraph when paid, unless the corporation elects, under regulations prescribed by the Secretary, after the date of enactment of this title to deduct the taxes described in this paragraph when accrued. Such election shall be irrevocable and shall apply to the taxable year for which the election is made and to all subsequent taxable years.

(2) CHARITABLE CONTRIBUTIONS.—The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), and (D) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the **[**5-percent**]** *10-percent* limitation) provided in section 170(b)(2) and (d)(1) and without the deduction of the amounts disallowed under paragraphs (5) and (6) of this subsection or the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 555(b) (relating to the inclusion in gross income of a foreign personal holding company of its distributive share of the undistributed foreign personal holding company income of another company in which it is a shareholder).

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Subchapter H—Banking Institutions

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PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

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SEC. 584. COMMON TRUST FUNDS.

(a) DEFINITIONS.—* * *

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(c) INCOME OF PARTICIPANTS IN FUND.—

(1) INCLUSIONS IN TAXABLE INCOME.—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 1 year;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 1 year;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

[(2) DIVIDENDS OR INTEREST RECEIVED.—The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 applies shall be considered for purposes of such section as having been received by such participant.]

(2) DIVIDENDS OR INTEREST RECEIVED.—The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 or 128 applies shall be considered for purposes of such section as having been received by such participant.

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Subchapter I—Natural Resources

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PART I—DEDUCTIONS

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SEC. 613A. LIMITATIONS ON PERCENTAGE DEPLETION IN CASE OF OIL AND GAS WELLS.

(a) GENERAL RULE.—* * *

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(c) EXEMPTION FOR INDEPENDENT PRODUCERS AND ROYALTY OWNERS.—

(1) IN GENERAL.—* * *

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(10) TRANSFERS BY INDIVIDUALS TO CORPORATIONS.—

(A) IN GENERAL.—Paragraph (9)(A) shall not apply to a transfer by an individual of qualified property to a qualified transferee corporation solely in exchange for stock in such corporation.

(B) 1,000-BARREL LIMIT FOR CORPORATION.—A tentative quantity shall be determined for the qualified transferee corporation under this subsection.

(C) TRANSFEROR'S TENTATIVE QUANTITY REDUCED.—

(i) IN GENERAL.—The tentative quantity for the transferor (and his family) for any period shall be reduced by the transferor's pro rata share of the corporation's depletable quantity for such period.

(ii) PRO RATA SHARE.—For purposes of clause (i), a transferor's pro rata share for any period shall be—

(I) in the case of production from property to which subparagraph (A) applies, that portion of the corporation's depletable quantity which is allocable to production from such property, and

(II) in the case of production from all other property, that portion of the corporation's depletable quantity which is allocable to the production from such property, multiplied by a fraction the numerator of which is the fair market value of the transferor's stock in the corporation, and the denominator of which is the fair market value of all stock in the corporation.

(iii) DEPLETABLE QUANTITY.—For purposes of this paragraph, a corporation's depletable quantity for any period in the lesser of—

(I) such corporation's tentative quantity for such period (determined under paragraphs (3) and (8)), or

(II) such corporation's average daily production for such period.

(D) QUALIFIED TRANSFEREE CORPORATION DEFINED.—For puruses of this paragraph, the term "qualified transferee corporation" means a corporation all of the outstanding stock of which has been issued to individuals solely in exchange for qualfied property held by such individuals.

(E) QUALIFIED PROPERTY DEFINED.—For purposes of this paragraph, the term "qualified property" means oil or gas property with respect to which—

(i) there has been no prior transfer to which paragraph (9)(A) applied, and

(ii) the transferor has made an election to have this paragraph apply.

The term also includes cash (not to exceed $1,000 in the aggregate) which one or more individuals transfer to the corporation. *For purposes of this subparagraph, the term "oil or gas property" includes, in the case of any well, necessary production equipment for such well which in place when the well is transferred.*

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Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

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PART 1—ESTATES, TRUSTS, AND BENEFICIARIES

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Subpart A—General Rules for Taxation of Estates and Trusts

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SEC. 643. DEFINITIONS APPLICABLE TO SUBPARTS A, B, C, AND D.

(a) DISTRIBUTABLE NET INCOME.—For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or turst computed with the following modifications—

(1) DEDUCTION FOR DISTRIBUTION.—No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) DEDUCTION FOR PERSONAL EXEMPTION.—No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

(3) CAPITAL GAINS AND LOSSES.—Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.

(4) EXTRAORDINARY DIVIDENDS AND TAXABLE STOCK DIVIDENDS.—For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) TAX-EXEMPT INTEREST.—There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) INCOME OF FOREIGN TRUST.—In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, (i) there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges, and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.

(D) Effective for distributions made in taxable years beginning after December 31, 1975, the undistributed net income of each foreign trust for each taxable year beginning on or before December 31, 1975, remaining undistributed at the close of the last taxable year beginning on or before December 31, 1975, shall be redetermined by taking into account the deduction allowed by section 1202.

[(7) DIVIDENDS OR INTEREST.—There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates).]

(7) DIVIDENDS OR INTEREST.—There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest).

If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

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Subpart E—Grantors and Others Treated as Substantial Owners

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SEC. 678. PERSON OTHER THAN GRANTOR TREATED AS SUBSTANTIAL OWNER.

(a) GENERAL RULE.—A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

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(e) CROSS REFERENCE.—

For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an electing small business corporation, see section 1371(g).

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Subchapter K—Partners and Partnerships

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PART I—DETERMINATION OF TAX LIABILITY

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SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) GENERAL RULE.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and loses from sales or exchanges of capital assets held for more than 1 year,

(3) gains and loses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

[(5) dividends or interest with respect to which there is provided an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,]

(5) dividends or interest with respect to which there is an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

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PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

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Subpart D—Provisions Common to Other Subparts

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SEC. 751. UNREALIZED RECEIVABLES AND INVENTORY ITEMS.

(a) SALE OR EXCHANGE OF INTEREST IN PARTNERSHIP.—* * *

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(c) UNREALIZED RECEIVABLES.—For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and sections 731, 736, and 741, such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), *section 1245 recovery property (as defined in section 1245(a)(5)),* stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1251(c), 1252(a), 1253(a) or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

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Subchapter L—Insurance Companies

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PART I—LIFE INSURANCE COMPANIES

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Subpart C—Gain and Loss from Operations

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SEC. 809. IN GENERAL.

(a) Exclusion of Share of Investment Yield Set Aside for Policyholders.—* * *

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(e) Modifications.—The modifications referred to in subsection (d)(11) are as follows:

(1) Interest.—In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 810(c).

(2) Bad debts.—Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) Charitable, etc., contributions and gifts.—In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be **[**5 percent**]** *10 percent* of the gain from operations computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) any operations loss carryback to the taxable year under section 812; and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) shall be applied.

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

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Subpart B—Earned Income of Citizens or Residents of United States

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SEC. 911. CITIZENS OR RESIDENTS OF THE UNITED STATES LIVING ABROAD.

(a) EXCLUSION FROM GROSS INCOME.—* * *

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(c) HOUSING COST AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year, over

(B) an amount equal to the product of—

(i) 16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS-14, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) HOUSING EXPENSES.—

(A) IN GENERAL.—The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) SECOND FOREIGN HOUSEHOLD.—

(i) IN GENERAL.—Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) SEPARATE HOUSEHOLD FOR SPOUSE AND DEPENDENTS.—If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(3) SPECIAL RULES WHERE HOUSING EXPENSES NOT PROVIDED BY EMPLOYER.—

(A) IN GENERAL.—To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) LIMITATION.—For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a)[(1)] for the taxable year.

(C) 1-YEAR CARRYOVER OF HOUSING AMOUNTS NOT ALLOWED BY REASON OF SUBPARAGRAPH (B).—

(i) IN GENERAL.—The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) LIMITATION.—For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) EMPLOYER PROVIDED AMOUNTS.—For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) FOREIGN EARNED INCOME.—For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED INDIVIDUAL.—The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) TAXPAYER ENGAGED IN TRADE OR BUSINESS.—In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) TAX HOME.—The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) WAIVER OF PERIOD OF STAY IN FOREIGN COUNTRY.—Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B), shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A) and (c)(1)(B)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence.—If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits.—No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income.—The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

[(7)] *(8)* Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

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Subchapter O—Gain or Loss on Disposition of Property

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PART II—BASIS RULES OF GENERAL APPLICATION

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SEC. 1014. BASIS OF PROPERTY ACQUIRED FROM A DECEDENT.

(a) In General.—* * *

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(b) Property Acquired From the Decedent.—For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annunities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

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PART III—COMMON NONTAXABLE EXCHANGES

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SEC. 1040. TRANSFER OF CERTAIN FARM, ETC., REAL PROPERTY.

(a) GENERAL RULE.—If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such [exchange] *transfer,* the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

* * * * * * *

(c) BASIS OF PROPERTY ACQUIRED IN [EXCHANGE] *TRANSFER* DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in [an exchange] *a transfer* with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the [exchange] *transfer* increased by the amount of the gain recognized to the estate or trust on the [exchange] *transfer.*

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PART VII—WASH SALES; STRADDLES

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SEC. 1092. STRADDLES.

(a) Recognition of Loss in Case of Straddles, Etc.—

(1) Limitation on recognition of loss.—

(A) In general.—Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the [unrealized] *unrecognized* gain (if any) with respect to 1 or more positions [which—

[(i) were acquired by the taxpayer before the disposition giving rise to such loss,

[(ii) were offsetting positions with respect to the 1 or more positions from which the loss arose, and

[(iii) were not part of an identified straddle as of the close of the taxable year.] *which were offsetting positions with respect to 1 or more positions from which the loss arose.*

(B) Carryover of loss.—Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

(2) Special rule for identified straddles.—

(A) In general.—In the case of any straddle which is an identified straddle as of the close of any taxable year—

(i) paragraph (1) shall not apply for such taxable year, and

(ii) any loss with respect to such straddle shall be treated as sustained not earlier than the day on which all of the positions making up the straddle are disposed of.

(B) Identified straddle.—The term "identified straddle" means any straddle—

(i) which is clearly identified on the taxpayer's records, before the close of the day on which the straddle is acquired, as an identified straddle,

(ii) all of the original positions of which (as identified by the taxpayer) are acquired on the same day and with respect to which—

(I) all of such positions are disposed of on the same day during the taxable year, or

(II) none of such positions has been disposed of as of the close of the taxable year, and

(iii) which is not part of a larger straddle.

(3) Unrealized gain.—For purposes of this subsection—

[(A) In general.—The term "unrealized gain" means the amount of gain which would be taken into account with respect to any position held by the taxpayer as of the close of the taxable year if such position were sold on the last business day of such taxable year at its fair market value.]

(3) Unrecognized gain.—For purposes of this subsection—

(A) In general.—The term "unrecognized gain" means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such

position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

(B) Reporting of gain.—

(i) In general.—Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

[(I) each position (whether or not part of a straddle) which is held by such taxpayer as of the close of the taxable year and with respect to which there is unrealized gain, and

[(II) the amount of such unrealized gain.]

(I) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

(II) the amount of such unrecognized gain.

(ii) Reports not required in certain cases.—Clause (i) shall not apply—

(I) to any position which is part of an identified straddle,

(II) to any position which, with respect to the taxpayer, is property described in paragraph (1) or (2) of section 1221 or to any position which is part of a hedging transaction (as defined in section 1256 (e)), or

(III) with respect to any taxable year if no loss on a position (including a regulated futures contract) has been sustained during such taxable year or if the only loss sustained on such position is a loss described in subclause (II).

* * * * * * *

(c) Straddle Defined.—For purposes of this section—

(1) In general.—The term "straddle" means offsetting positions with respect to personal property.

(2) Offsetting positions.—

(A) In general.—A taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer's risk of loss from holding any position with respect to personal property by reason of his holding 1 or more other positions with respect to personal property (whether or not of the same kind).

(B) One side larger than other side.—If 1 or more positions offset only a portion of 1 or more other positions, the Secretary shall by regulations prescribe the method for determining the portion of such other positions which is to be taken into account for purposes of this section.

(C) Special rule for identified straddles.—In the case of any position which is not part of an indentified straddle (within the meaning of subsection [(a)(3)(B)] *(a)(2)(B)),* such position shall not be treated as offsetting with respect to any position which is part of an identified straddle.

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) PERSONAL PROPERTY.—The term "personal property" means any personal property (other than stock) of a type which is actively traded.

(2) POSITION.—

(A) IN GENERAL.—The term "position" means an interest (including a futures or forward contract or option) in personal property.

(B) SPECIAL RULE FOR STOCK OPTIONS.—The term "position" includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which—

(i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and

(ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

(3) POSITIONS HELD BY RELATED PERSONS, ETC.—

(a) IN GENERAL.—In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

(B) RELATED PERSON.—For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

(C) CERTAIN FLOWTHROUGH ENTITIES.—If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

[(4) SPECIAL RULE FOR REGULATED FUTURES CONTRACTS.—In the case of a straddle—

[(A) at least 1 (but not all) of the positions of which are regulated futures contracts, and

[(B) with respect to which the taxpayer has elected not to have the provisions of section 1256 apply,

the provisions of this section shall apply to any regulated futures contract and any other position making up such straddle.]

(4) SPECIAL RULE FOR REGULATED FUTURES CONTRACTS.—In the case of a straddle at least 1 (but not all) of the positions of which are regulated futures contracts, the provisions of this sec-

tion shall apply to any regulated futures contract and any other position making up such straddle.

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Subchapter P—Capital Gains and Losses

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PART II—TREATMENT OF CAPITAL LOSSES

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SEC. 1212. CAPITAL LOSS CARRYBACKS AND CARRYOVERS.

(a) CORPORATIONS.—* * *

* * * * * * *

(c) CARRYBACK OF LOSSES FROM REGULATED FUTURES CONTRACTS TO OFFSET PRIOR GAINS FROM SUCH CONTRACTS.—

(1) IN GENERAL.—If a taxpayer (other than a corporation) has a net commodity futures loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net commodity futures loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from regulated futures contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from regulated futures contracts.

(2) AMOUNT CARRIED TO EACH TAXABLE YEAR.—The entire amount of the net commodity futures loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) AMOUNT WHICH MAY BE USED IN ANY PRIOR TAXABLE YEAR.—An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net commodity futures gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) NET COMMODITY FUTURES LOSS.—For purposes of paragraph (1), the term "net commodity futures loss" means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from regulated futures contracts [and positions to which section 1256 applies], or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

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PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

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SEC. 1223. HOLDING PERIOD OF PROPERTY.

For purposes of this subtitle—

(1) * * *

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(8) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract *(other than a commodity futures contract to which section 1256 applies)* there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

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(12) If—

(A) property is acquired by any person in a transfer to which section 1040 applies,

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death, and

(C) such sale or disposition is to a person who is a qualified heir (as defined in section 2032A(e)(1)) with respect to the decedent,

then the person making such sale or other disposition shall be considered to have held such property for more than 1 year.

[(12)] *(13)* CROSS REFERENCE.—

For special holding period provision relating to certain partnership distributions, see section 735(b).

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PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

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SEC. 1239. GAIN FROM SALE OF DEPRECIABLE PROPERTY BETWEEN CERTAIN RELATED TAXPAYERS.

(a) TREATMENT OF GAIN AS ORDINARY INCOME.—In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

[(b) RELATED PERSONS.—For purposes of subsection (a), the term "related persons" means—

[(1) the taxpayer and the taxpayer's spouse,

[(2) the taxpayer and an 80-percent owned entity, or

[(3) two 80-percent owned entities.

[(c) 80-PERCENT OWNED ENTITY DEFINED.—

[(1) GENERAL RULE.—For purposes of this section, the term "80-percent owned entity" means—

[(A) a corporation 80 percent or more in value of the outstanding stock of which is owned (directly or indirectly) by or for the taxpayer, and

[(B) a partnership 80 percent or more of the capital interest or profits interest in which is owned (directly or indirectly) by or for the taxpayer.

[(2) CONSTRUCTIVE OWNERSHIP.—For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

[(A) the members of an individual's family shall consist only of such individual and such individual's spouse, and

[(B) paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein.]

(b) RELATED PERSONS.—For purposes of subsection (a), the term "related persons" means—

(1) a husband and wife, and

(2) a person and all entities which are 80-percent owned entities with respect to such person.

(c) 80-PERCENT OWNED ENTITY DEFINED.—

(1) GENERAL RULE.—For purposes of this section, the term "80-percent owned entity" means, with respect to any person—

(A) a corporation 80 percent or more in value of the outstanding stock of which is owned (directly or indirectly) by or for such person, and

(B) a partnership 80 percent or more of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person.

(2) CONSTRUCTIVE OWNERSHIP.—For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

(A) the members of an individual's family shall consist only of such individual and such individual's spouse,

(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

(C) paragraph (3) of section 318(a) shall not apply.

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SEC. 1245. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE PROPERTY.

(a) GENERAL RULE.—

(1) ORDINARY INCOME.—Except as otherwise provided in this section, if section 1245 property is disposed of during a taxable year beginning after December 31, 1962, or section 1245 recov-

ery property is disposed of after December 31, 1980, the amount by which the lower of—

(A) the recomputed basis of the property, or

(B) (i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) RECOMPUTED BASIS.—For purposes of this section, the term "recomputed basis" means—

(A) with respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) with respect to any property referred to in paragraph (3)(C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963,

(C) with respect to livestock, its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969,

(D) with respect to any property referred to in paragraph (3)(D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under section 169, 179, 185, 190, 193, or 194, or

(E) with respect to any section 1245 recovery property, the adjusted basis of such property recomputed by adding thereto all adjustments attributable to periods for which a deduction is allowed under section 168(a) (as added by the Economic Recovery Tax Act of 1981) with respect to such property,

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 179, 184, 185, 188, 190, 193, 194, or (in the case of property described in paragraph (3)(C)) 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 179, 184, 185, 188, 190, 193, 194, or (in the case of property described in paragraph (3)(C)) 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), for any period was less than the amount allowable, the amount added for such period shall be the amount allowed. For purposes of this section, any deduction allowable under section 179, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) SECTION 1245 PROPERTY.—For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) an elevator or an escalator,

(D) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 185, 188, 190, 193, or 194,

(E) a single purpose agricultural or horticultural structure (as defined in section 48(p)), or

(F) a storage facility *(not including a building or its structural components)* used in connection with the distribution of petroleum or any primary product of petroleum.

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SEC. 1248. GAIN FROM CERTAIN SALES OR EXCHANGES OF STOCK IN CERTAIN FOREIGN CORPORATIONS.

(a) GENERAL RULE.—* * *

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(c) DETERMINATION OF EARNINGS AND PROFITS.—

(1) IN GENERAL.—Except as provided in section [312(k)(3)] *312(k)(4)*, for purposes of this section the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

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SEC. 1250. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE REALTY.

(a) GENERAL RULE.—* * *

* * * * * * *

(b) ADDITIONAL DEPRECIATION DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment. [For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.]

(2) PROPERTY HELD BY LESSEE.—In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than ⅔ of the period on the basis of which the depreciation adjustments were allowed.

(3) DEPRECIATION ADJUSTMENTS.—The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185, 188, 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) ADDITIONAL DEPRECIATION ATTRIBUTABLE TO REHABILITATION EXPENDITURES.—The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard

to the useful life permitted under section 167(k) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

(5) METHOD OF COMPUTING STRAIGHT LINE ADJUSTMENTS.—For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—

(A) in the case of recovery property, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and

(B) in the case of any property which is not recovery property, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).

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SEC. 1256. REGULATED FUTURES CONTRACTS MARKED TO MARKET.

(a) GENERAL RULE.— * * *

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(b) REGULATED FUTURES CONTRACTS DEFINED.—For purposes of this section, the term "regulated futures contract" means a contract—

[(1) which requires delivery of personal property (as defined in section 1092(d)(1)) or an interest in such property;]

[(2)] *(1)* with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market; and

[(3)] *(2)* which is traded on or subject to the rules of a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission or of any board of trade or exchange which the Secretary determines has rules adequate to carry out the purposes of this section.

Such term includes any foreign currency contract.

[(c) TERMINATIONS.—The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination during the taxable year of the taxpayer's obligation with respect to a regulated futures contract by offsetting, by taking or making delivery, or otherwise. For purposes of the preceding sentence, fair market value at the time of the termination shall be taken into account.]

(c) TERMINATIONS, ETC.—

(1) IN GENERAL.—The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a regulated futures contract by offsetting, by taking or making delivery, or otherwise.

(2) SPECIAL RULE WHERE TAXPAYER TAKES DELIVERY ON PART OF STRADDLE.—If—

(A) 2 or more regulated futures contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) Fair market value taken into account.—For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) Elections With Respect to Mixed Straddles.—

(1) Election.—The taxpayer may elect to have this section not to apply to all regulated futures contracts which are part of a mixed straddle.

(2) Time and manner.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) Election revocable only with consent.—An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) Mixed straddle.—For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are regulated futures contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which [such position] *the first regulated futures contract forming part of the straddle* is acquired, as being part of such straddle.

(e) Mark to Market Not To Apply to Hedging Transactions.—

(1) Section not to apply.—Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction.—For purposes of this subsection, the term "hedging transaction" means any transaction if—

(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

(B) the gain or loss on such transactions is treated as ordinary income or loss, and

(C) before the close of the day on which such transaction was entered into, the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates.—

(A) In general.—Notwithstanding paragraph (2), the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.

(B) **Syndicate defined.**—For purposes of subparagraph (A), the term "syndicate" means any partnership or other entity (other than a corporation which is not an electing small business corporation within the meaning of section 1371(b)) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) **Holdings attributable to active management.**—For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines *(by regulations or otherwise)* that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax-avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) **Special rule for banks.**—In the case of a bank (as defined in section 581), subparagraph (A) of paragraph (2) shall be applied without regard to clause (i) or (ii) thereof.

(f) **Special Rules.**—

(1) **Denial of capital gains treatment for property identified as part of a hedging transaction.**—For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2)(C) by the taxpayer as being part of a hedging transaction.

(2) **Subsection (a)(3) not to apply to ordinary income property.**—Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

*(g) **Foreign Currency Contracts Defined.**—*

(1) Foreign currency contract.—For purposes of this section, the term "foreign currency contract" means a contract—

(A) which requires delivery of a foreign currency which is a currency in which positions are also traded through regulated futures contracts, and

(B) which is traded in the interbank market.

(2) Valuation.—For purposes of this section, the fair market value of any foreign currency contract shall be determined under regulations prescribed by the Secretary. Such regulations may disregard any terms in a contract which the Secretary determines preclude readily ascertainable valuations.

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Subchapter S—Election of Certain Small Business Corporations as to Taxable Status

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SEC. 1371. DEFINITIONS.

(a) Small Business Corporation.—* * *

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(g) Special Rule for Qualified Subchapter S Trust.—

(1) In general.—In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)—

(A) such trust shall be treated as a trust described in subsection (e)(1)(A), and

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an electing small business corporation with respect to which the election under paragraph (2) is made.

(2) Election.—

(A) In general.—A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election.—An election under this paragraph shall be made—

(i) separately with respect to each electing small business corporation the stock of which is held by the trust,

(ii) separately with respect to each successive income beneficiary of the trust, and

(iii) in such manner and form, and at such time, as the Secretary may prescribe.

(C) Election irrevocable.—An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period.—An election under this paragraph shall be effective up to 60 days before the date of the election.

(3) Qualified subchapter S trust.—For purposes of this subsection, the term "qualified subchapter S trust" means a trust—

(A) which owns stock in 1 or more electing small business corporations,

[(B) all of the income of which is distributed currently to one individual who is a citizen or resident of the United States, and]

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States, and

(C) the terms of which require that—

(i) at any time, there shall be only one income beneficiary of the trust,

(ii) any corpus distributed during the term of the trust may be distributed only to the current income beneficiary thereof,

(iii) each income interest in the trust shall terminate on the earlier of the death of the income beneficiary or the termination of the trust, and

(iv) upon the termination of the trust during the life of an income beneficiary, the trust shall distribute all of its assets to such income beneficiary.

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter A—Estates of Citizens or Residents

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PART III—GROSS ESTATE

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SEC. 2032A. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

(a) Value Based on Use Under Which Property Qualifies.—* * *

* * * * * * *

(b) Qualified Real Property.—

(1) In general.—For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use

by the decedent or a member of the decedent's family, but only if—

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

(i) on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in subsection (d)(2).

(2) QUALIFIED USE.—For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

(3) ADJUSTED VALUE.—For purposes of paragraph (1), the term "adjusted value" means—

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect to such property under paragraph (4) of section 2053(a).

(4) DECEDENTS WHO ARE RETIRED OR DISABLED.—

(A) IN GENERAL.—If, on the date of the decedent's death the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent—

(i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in paragraph (1)(C).

(B) DISABLED DEFINED.—For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) COORDINATION WITH RECAPTURE.—For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

(5) SPECIAL RULES FOR SURVIVING SPOUSES.—

(A) IN GENERAL.—If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the "first decedent") and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) SPECIAL RULE.—For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) COORDINATION WITH PARAGRAPH (4).—In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

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(i) EXCHANGES OF QUALIFIED REAL PROPERTY.—

(1) TREATMENT OF PROPERTY EXCHANGED.—

(A) EXCHANGES SOLELY FOR QUALIFIED EXCHANGE PROPERTY.—If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) EXCHANGES WHERE OTHER PROPERTY RECEIVED.—If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the fair market value of [the other property] *the qualified exchange property* bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) TREATMENT OF QUALIFIED EXCHANGE PROPERTY.—For purposes of subsection (c)—

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) QUALIFIED EXCHANGE PROPERTY.—For purposes of this subsection, the term "qualified exchange property" means real property which is to be used for the qualified use set forth in subparagraph [(A), (B), or (C)] *(A) or (B)* of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

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SEC. 2035. ADJUSTMENTS FOR GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) INCLUSION OF GIFTS MADE BY DECEDENT.—Except as provided in subsection (b), the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(b) EXCEPTIONS.—Subsection (a) shall not apply—

(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

(2) to any gift to a donee made during a calendar year if the decedent was not required by section 6019 (other than by reason of section 6019[(a)](2)) to file any gift tax return for such year with respect to gifts to such donee. Paragraph (2) shall not apply to any transfer with respect to a life insurance policy.

* * * * * * *

(d) DECEDENTS DYING AFTER 1981.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, subsection (a) shall not apply to the estate of a decedent dying after December 31, 1981.

(2) EXCEPTIONS FOR CERTAIN TRANSFERS.—Paragraph (1) *of this subsection and paragraph (2) of subsection (b)* shall not

apply to a transfer of an interest in property which is included in the value of the gross estate under section 2036, 2037, 2038, [2041,] or 2042 or would have been included under any of such sections if such interest had been retained by the decedent.

(3) 3-YEAR RULE RETAINED FOR CERTAIN PURPOSES.—Paragraph (1) shall not apply for purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farm, etc., real property), *and*

[(C) section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), and]

[(D)] *(C)* subchapter C of chapter 64 (relating to lien for taxes).

(4) COORDINATION OF 3-YEAR RULE WITH SECTION 6166(a)(1).—An estate shall be treated as meeting the 35-percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

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SEC. 2039. ANNUITIES.

(a) GENERAL.—* * *

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(f) LUMP SUM DISTRIBUTIONS.—

[(1) IN GENERAL.—An amount is described in this subsection if it is a lump sum distribution described in section 402(e)(4) (determined without regard to the next to the last sentence of section 402(e)(4)(A)).]

(1) IN GENERAL.—An amount is described in this subsection if—

(A) it is a lump sum distribution described in section 402(e)(4) (determined without regard to the third sentence of section 402(e)(4)(A)), or

(B) it is an amount attributable to accumulated deductible employee contributions (as defined in section 72(o)(5)(B)) in any plan taken into account for purposes of determining whether the distribution described in subparagraph (A) qualifies as a lump sum distribution.

(2) EXCEPTION WHERE RECIPIENT ELECTS NOT TO TAKE 10-YEAR AVERAGING.—[A lump sum distribution] *An amount* described in paragraph (1) shall be treated as not described in this subsection if the recipient elects irrevocably (at such time and in such manner as the Secretary may by regulations prescribe) to treat the distribution as taxable under section 402(a) (without the application of paragraph (2) thereof) except to the extent that section 402(e)(4)(J) applies to such distribution.

* * * * * * *

SEC. 2044. CERTAIN PROPERTY FOR WHICH MARITAL DEDUCTION WAS PREVIOUSLY ALLOWED.

(a) GENERAL RULE.—The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

(b) PROPERTY TO WHICH THIS SECTION APPLIES.—This section applies to any property if—

(1) a deduction was allowed with respect to the transfer of such property to the decedent—

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

(c) PROPERTY TREATED AS HAVING PASSED FROM DECEDENT.—For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

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PART IV—TAXABLE ESTATE

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SEC. 2056. BEQUESTS, ETC., TO SURVIVING SPOUSE.

(a) ALLOWANCE OF MARITAL DEDUCTION.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property whch passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) LIMITATION IN THE CASE OF LIFE ESTATE OR OTHER TERMINABLE INTEREST.—

(1) GENERAL RULE.—Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(2) INTEREST IN UNIDENTIFIED ASSETS.—Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) INTEREST OF SPOUSE CONDITIONAL ON SURVIVAL FOR LIMITED PERIOD.—For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of a decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

(4) VALUATION OF INTEREST PASSING TO SURVIVING SPOUSE.—In determining for purposes of subsection (a) value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) LIFE ESTATE WITH POWER OF APPOINTMENT IN SURVIVING SPOUSE.—In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such

specific portion, to any person other than the surviving spouse—

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) LIFE INSURANCE OR ANNUITY PAYMENTS WITH POWER OF APPOINTMENT IN SURVIVING SPOUSE.—In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of any such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(7) ELECTION WITH RESPECT TO LIFE ESTATE FOR SURVIVING SPOUSE.—

(A) IN GENERAL.—In the case of qualified terminable interest property—

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

(B) QUALIFIED TERMINABLE INTEREST PROPERTY DEFINED.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualified terminable interest property" means property—

(I) which passes from the decedent,

(II) in which the surviving spouse has a qualifying income interest for life, and

(III) to which an election under this paragraph applies.

(ii) QUALIFYING INCOME INTEREST FOR LIFE.—The surviving spouse has a qualifying income interest for life if—

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. *An annuity shall not be treated as a qualifying income interest for life.*

(iii) PROPERTY INCLUDES INTEREST THEREIN.—The term "property" includes an interest in property.

(iv) SPECIFIC PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

(v) ELECTION.—An election under this paragraph with respect to any property shall be mde by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) NONCHARITABLE BENEFICIARY.—The term "noncharitable beneficiary" means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term "qualified charitable remainder trust" means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664).

(9) DENIAL OF DOUBLE DEDUCTION.—Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

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CHAPTER 12—GIFT TAX

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Subchapter B—Transfers

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SEC. 2518. DISCLAIMERS.

(a) GENERAL RULE.—* * *

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(c) OTHER RULES.—For purposes of subsection (a)—

(1) DISCLAIMER OF UNDIVIDED PORTION OF INTEREST.—A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

(2) POWERS.—A power with respect to property shall be treated as an interest in such property.

(3) CERTAIN TRANSFERS TREATED AS DISCLAIMERS.—[For purposes of subsection (a), a] A written transfer of the transferor's entire interest in the property—

(A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)), shall be treated as a qualified disclaimer.

SEC. 2519. DISPOSITIONS OF CERTAIN LIFE ESTATES.

[(a) GENERAL RULE.—Any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of such property.]

(a) GENERAL RULE.—For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

(b) PROPERTY TO WHICH THIS SUBSECTION APPLIES.—This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

(1) under section 2056 by reason of subsection (b)(7) thereof, or

(2) under section 2523 by reason of subsection (f) thereof.

(c) CROSS REFERENCE.—

For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).

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Subchapter C—Deductions

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SEC. 2523. GIFT TO SPOUSE.

(a) ALLOWANCE OF DEDUCTION.—* * *

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(f) ELECTION WITH RESPECT TO LIFE ESTATE FOR DONEE SPOUSE.—

(1) IN GENERAL.—In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

(2) QUALIFIED TERMINABLE INTEREST PROPERTY.—For purposes of this subsection, the term "qualified terminable interest property" means any property—

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

(3) CERTAIN RULES MADE APPLICABLE.—For purposes of this subsection, [the rules of] *rules similar to the rules of* clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply.

[(4) ELECTION.—An election under this subsection with respect to any property shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred. Such an election, once made, shall be irrevocable.]

(4) ELECTION.—

(A) TIME AND MANNER.—An election under this subsection with respect to any property shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe.

(B) ELECTION IRREVOCABLE.—An election under this subsection, once made, shall be irrevocable.

(5) TREATMENT OF INTEREST RETAINED BY DONOR SPOUSE.—

(A) IN GENERAL.—In the case of any qualified terminable interest property—

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

(B) SUBPARAGRAPH (A) NOT TO APPLY AFTER TRANSFER BY DONEE SPOUSE.—Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

(g) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

(1) IN GENERAL.—If, after the transfer, the donee spouse is the only non-charitable beneficiary (other than the donor) of a qualified remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

(2) DEFINITIONS.—For purposes of paragraph (1), the terms "noncharitable beneficiary" and "qualified charitable remainder trust" have the meanings given to such terms by section 2056(b)(8)(B).

(h) Denial of Double Deduction.—Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

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Subtitle C—Employment Taxes

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3401. DEFINITIONS.

(a) Wages.—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) * * *

* * * * * * *

(12) to, or on behalf of, an employee or his benficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a); or

(D) for a payment described in section 219[(a)] if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 42—PRIVATE FOUNDATIONS; BLACK LUNG BENEFIT TRUSTS

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Subchapter A—Private Foundations

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SEC. 4942. TAXES ON FAILURE TO DISTRIBUTE INCOME.

(a) Initial Tax.—* * *

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(j) Other Definitions.—For purposes of this section—

(1) Taxable period.—The term "taxable period" means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

(B) the date on which the tax imposed by subsection (a) is assessed.

(2) Allowable distribution period.—The term "allowable distibution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) Operating foundation.—For purposes of this section, the term "operating foundation" means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—

(i) its adjusted net income (as defined in subsection (f)), **[and]** *or*

(ii) its minimum investment return; and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and subtantially all of the assets of which are so devoted,

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

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CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

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SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

(a) TAX IMPOSED.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).

(b) EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—For purposes of this section, the term "excess contributions" means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4), reduced by the sum of the correcting distributions (as defined in paragraph (5)) made in all prior taxable years beginning after December 31, 1975. For purposes of this subsection the amount of any contribution which is allocable (determined under regulations precribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—The amount determined under this paragraph, in the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (within the meaning of section 401(c)(3)), is the sum of—

(A) the excess (if any) of—

(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

(B) the amount determined under this paragraph for the preceding taxable year of the employer,

reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

No contribution by an owner-employee which is a deductible employee contribution (as defined in section 72(o)(5)) shall be taken into account under this paragraph.

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CHAPTER 45—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

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Subchapter A—Imposition and Amount of Tax

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SEC. 4988. WINDFALL PROFIT; REMOVAL PRICE.

(a) GENERAL RULE.—For purposes of this chapter, the term "windfall profit" means the excess of the removal price of the barrel of crude oil over the sum of—

(1) the adjusted base price of such barrel, and

(2) the amount of the severance tax adjustment with respect to such barrel provided by section 4996(c).

(b) NET INCOME LIMITATION ON WINDFALL PROFIT.—

(1) IN GENERAL.—The windfall profit on any barrel of crude oil shall not exceed 90 percent of the net income attributable to such barrel.

(2) DETERMINATION OF NET INCOME.—For purposes of paragraph (1), the net income attributable to a barrel shall be determined by dividing—

(A) the taxable income from the property for the taxable year attributable to taxable crude oil, by

(B) the number of barrels of taxable crude oil from such property taken into account for such taxable year.

(3) TAXABLE INCOME FROM THE PROPERTY.—For purposes of [paragraph (2)] *this subsection*—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the taxable income from the property shall be determined under section 613(a).

(B) CERTAIN DEDUCTIONS NOT ALLOWED.—No deduction shall be allowed for—

(i) depletion,

(ii) the tax imposed by section 4986,

(iii) section 263(c) costs, or

(iv) qualified tertiary injectant expenses to which an election under subparagraph (E) applies.

(C) TAXABLE INCOME REDUCED BY COST DEPLETION.—Taxable income shall be reduced by the cost depletion which would have been allowable for the taxable year with respect to the property if—

(i) all—

(I) section 263(c) costs, and

(II) qualified tertiary injectant expenses to which an election under subparagraph (E) applies,

incurred by the taxpayer had been capitalized and taken into account in computing cost depletion, and

(ii) cost depletion had been used by the taxpayer with respect to such property for all taxable [periods] *years*.

(D) SECTION 263(C) COSTS.—For purposes of this paragraph, the term "section 263(c) costs" means intangible drilling and development costs incurred by the taxpayer which (by reason of an election under section 263(c)) may be deducted as expenses for purposes of this title (other than this paragraph). Such term shall not include costs incurred in drilling a nonproductive well.

(E) ELECTION TO CAPITALIZE QUALIFIED TERTIARY INJECTANT EXPENSES.—

(i) IN GENERAL.—Any taxpayer may elect, with respect to any property, to capitalize qualified tertiary injectant expenses for purposes of this paragraph. Any such election shall apply to all qualified tertiary injectant expenses allocable to the property for which the election is made, and may be revoked only with the consent of the Secretary. Any such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(ii) QUALIFIED TERTIARY INJECTANT EXPENSES.—The term "qualified tertiary injectant expenses" means any expense allowable as a deduction under section 193.

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(6) COST RECOVERY OIL COVERED BY NET PROFITS AGREEMENT.—For purposes of paragraph (2), if any person is treated under section 4996(a)(1)(B) as the producer of any portion of the cost recovery oil covered by a net profits agreement (within the meaning of section 4996(h))—

(A) such person (and only such person) shall include in his gross income from the property the gross income from such portion, and

(B) the qualified costs allocable to such portion shall be treated as paid or incurred by such person (and only by such person).

SEC. 4989. ADJUSTED BASE PRICE.

(a) ADJUSTED BASE PRICE DEFINED.—For purposes of this chapter, the term "adjusted base price" means the base price for the barrel of crude oil plus an amount equal to—

(1) such base price, multiplied by

(2) the inflation adjustment for the calendar quarter in which the crude oil is removed from the premises.

The amount determined under the preceding sentence shall be rounded to the nearest cent.

(b) Inflation Adjustment.—

(1) In general.—For purposes of subsection (a), the inflation adjustment for any calendar quarter is the percentage by which—

(A) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

(B) such deflator for the calendar quarter ending June 30, 1979.

(2) Additional adjustment for tier 3 oil.—The adjusted base price for tier 3 oil shall be determined by substituting for the implicit price deflator referred to in paragraph (1)(A) an amount equal to such deflator multiplied by 1.005 to the nth power where "n" equals the number of calendar quarters beginning after September 1979 and before the calendar quarter in which the oil is removed from the premises.

(3) First revision of price deflator used.—For purposes of paragraphs [(1) and (2)] *(1)(A) and (2),* the first revision of the price deflator shall be used. *For purposes of applying paragraph (1)(B) the revision of the price deflator which is most consistent with the revision used for purposes of paragraph (1)(A) shall be used.*

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Subchapter B—Categories of Oil

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SEC. 4991. TAXABLE CRUDE OIL; CATEGORIES OF OIL.

(a) Taxable Crude Oil.—* * *

* * * * * * *

(d) Tier 2 Oil.—For purposes of this chapter—

(1) In general.—Except as provided in paragraph (2), the term "tier 2 oil" means—

(A) any oil which is from a stripper well property within the meaning of the June 1979 energy regulations, and

(B) any oil from an economic interest in a [National] *Naval* Petroleum Reserve held by the United States.

(2) Exclusion of certain oil.—The term "tier 2 oil" does not include tier 3 oil.

* * * * * * *

SEC. 4992. INDEPENDENT PRODUCER OIL.

(a) General Rule.—For purposes of this chapter, the term "independent producer oil" means that portion of an independent producer's qualified production for the quarter which does not exceed such person's independent producer amount for such quarter.

(b) Independent Producer Defined.—For purposes of this section—

[(1) IN GENERAL.—The term "independent producer" means, with respect to any quarter, any person other than a person to whom subsection (c) of section 613A does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d).

[(2) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of paragraph (1), paragraphs (2) and (4) of section 613A(d) shall be applied—

[(A) by substituting "quarter" for "taxable year" each place it appears in such paragraphs, and

[(B) by substituting "$1,250,000" for "$5,000,000" in paragraph (2) of section 613A(d).]

(b) INDEPENDENT PRODUCER DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "independent producer" means, with respect to any quarter in any calendar year, any person other than a person to whom subsection (c) of section 613A does not apply for such calendar year by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d).

(2) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of paragraph (1), paragraphs (2) and (4) of section 613A(d) shall be applied by substituting "calendar year" for "taxable year" each place it appears in such paragraphs.

(c) INDEPENDENT PRODUCER AMOUNT.—For purposes of this section—

(1) IN GENERAL.—A person's independent producer amount for any quarter is the product of—

(A) 1,000 barrels, multiplied by

(B) the number of days in such quarter (31 in the case of the first quarter of 1980).

(2) PRODUCTION EXCEEDS AMOUNT.—If a person's qualified production for any quarter exceeds such person's independent producer amount for such quarter, the independent producer amount shall be allocated—

(A) between tiers 1 and 2 in proportion to such person's [production for such quarter of domestic crude oil] *qualified production of oil for such quarter* in each such tier, and

(B) within any tier, on the basis of the removal prices for such person's [domestic crude oil] *qualified production of oil* in such tier removed during such quarter, beginning with the highest of such prices.

[For purposes of the preceding sentence, tier 1 oil and tier 2 oil shall be treated as not including exempt stripper well oil.]

(d) QUALIFIED PRODUCTION OF OIL DEFINED.—For purposes of this section—

(1) IN GENERAL.—An independent producer's qualified production of oil for any quarter is the number of barrels of taxable crude oil—

(A) of which such person is the producer,

(B) which is removed during such quarter,

(C) which is tier 1 oil or tier 2 oil, and

(D) which is attributable to the independent producer's working interest in a property.

(2) WORKING INTEREST DEFINED.—

(A) IN GENERAL.—The term "working interest" means an operating mineral interest (within the meaning of section 614(d))—

(i) which was in existence as such an interest on January 1, 1980, or

(ii) which is attributable to a qualified overriding royalty interest.

(B) QUALIFIED OVERRIDING ROYALTY INTEREST.—For purposes of subparagraph (A)(ii), the term "qualified overriding royalty interest" means an overriding royalty interest in existence as such an interest on January 1, 1980, but only if on February 20, 1980, there was in existence a binding contract under which such interest was to be converted into an operating mineral interest (within the meaning of section 614(d)).

(3) PRODUCTION FROM TRANSFERRED PROPERTY.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, in the case of a transfer on or after January 1, 1980, of an interest in any property, the qualified production of the transferee shall not include any production attributable to such interest.

(B) SMALL PRODUCER TRANSFER EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any transfer of an interest in property if the transferee establishes (in such manner as may be prescribed by the Secretary by regulations) that at no time after December 31, 1979, has the **[**property**]** *interest* been held by a person who was a disqualified transferor for any quarter ending after September 30, 1979, and ending before the date such person transferred the interest.

(ii) DISQUALIFIED TRANSFEROR.—The term "disqualified transferor" means, with respect to any quarter, any person who—

(I) had qualified production for such quarter which exceeded such person's independent producer amount for such quarter, or

(II) was not an independent producer for such quarter.

(iii) SPECIAL RULES.—For purposes of this paragraph—

(I) PROPERTY HELD BY PARTNERSHIPS.—Property held by a partnership at any time shall be treated as owned proportionately by the partners of such partnership at such time.

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SEC. 4993. INCREMENTAL TERTIARY OIL.

(a) IN GENERAL.—* * *

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(c) QUALIFIED TERTIARY RECOVERY PROJECT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified tertiary recovery project" means—

(A) a qualified tertiary enhanced recovery project with respect to which a certification as such has been approved and is in effect under the June 1979 energy regulations, or

(B) any project for enhancing recovery of crude oil which meets the requirements of paragraph (2).

(2) REQUIREMENTS.—A project meets the requirements of this paragraph if—

(A) the project involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

[(B) the project beginning date is after May 1979,]

(B) the date on which the injection of liquids, gases, or other matter begins is after May 1979,

(C) the portion of the property to be affected by the project is adequately delineated,

(D) the operator submits (at such time and in such manner as the Secretary may by regulations prescribe) to the Secretary—

(i) a certification from a petroleum engineer that the project meets the requirements of subparagraphs (A), (B), and (C), or

(ii) a certification that a jurisdictional agency (within the meaning of subsection (d)(5)) has approved the project as meeting the requirements of subparagraphs (A), (B), and (C), and that such approval is still in effect, and

(E) the operator submits (at such time and such manner as the Secretary may by regulations prescribe) to the Secretary a certification from a petroleum engineer that the project continues to meet the requirements of subparagraphs (A), (B), and (C).

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SEC. 4994. DEFINITIONS AND SPECIAL RULES RELATING TO EXEMPTIONS.

(a) QUALIFIED GOVERNMENTAL INTEREST.—* * *

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(c) FRONT-END TERTIARY OIL.—

(1) EXEMPTION FOR TERTIARY PROJECTS OF INDEPENDENTS.—For purposes of this chapter, the term "exempt front-end oil" means any domestic crude oil—

(A) which is removed from the premises before October 1, 1981, and

(B) which is treated as front-end oil by reason of a front-end tertiary project on one or more properties each of which is a qualified property.

(2) REFUNDS FOR TERTIARY PROJECTS OF INTEGRATED PRODUCERS.—

(A) In general.—In the case of any front-end tertiary project which does not meet the requirements of paragraph (1)(B), the excess of—

(i) the allowed expenses of the [taxpayer] *producer* with respect to such project, over

(ii) the tertiary incentive revenue,

shall be treated as a payment by the [taxpayer] *producer* with respect to the tax imposed by this chapter made on September 30, 1981.

* * * * * * *

(e) Exempt Alaskan Oil.—For purposes of this chapter, the term "exempt Alaskan oil" means any crude oil (other than Sadlerochit oil) which is produced—

[(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or]

(1) from a well located north of the Arctic Circle or from a reservoir from which oil has been produced in commercial quantities through such a well, or

(2) from a well located on the northerly side of [the divide of the Alaska-Aleutian Range] *the divides of the Alaska and Aleutian Ranges* and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.

(f) Exempt Royalty Oil.—

(1) In general.—For purposes of this chapter, the term "exempt royalty oil" means that portion of the qualified royalty owner's qualified royalty production for the quarter which does not exceed the royalty limit for such quarter.

(2) Royalty limit.—For purposes of this subsection—

(A) In general.—A qualified royalty owner's royalty limit for any quarter is the product of—

(i) the number of days in such quarter, multiplied by

(ii) the limitation in barrels determined under the following table:

In the case of qualified royalty production during:	The limitation in barrels is:
1982	2
1983	2
1984	2
1985 and thereafter	3

(B) Production exceeds limitation.—If a qualified royalty owner's qualified royalty production for any quarter exceeds the royalty limitation for such quarter, such royalty owner may allocate such limit to any qualified royalty production which he selects.

(3) Definitions.—

(A) In general.—The terms "qualified royalty owner" and "qualified royalty production" have the meanings given to such terms by section 6429; except that the reference to qualified taxable crude oil in section 6429(d) shall be treated as a reference to oil which would have been taxable crude oil but for this section.

(B) ALLOCATION.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 6429(c) shall apply to the limitation determined under [subsection (b)(1)] *paragraph (2)(A).*

(g) EXEMPT STRIPPER WELL OIL.—

(1) IN GENERAL.—For purposes of this chapter, the term "exempt stripper well oil" means any oil—

(A) the producer of which is an independent producer (within the meaning of section 4992(b)(1)),

(B) which is from a stripper well property within the meaning of the June 1979 energy regulations, and

(C) which is attributable to the independent producer's working interest in the stripper well property.

(2) LIMITATION FOR CERTAIN TRANSFERRED PROPERTIES.—Exempt stripper well oil does not include production attributable to an interest in any property which at any time after July 22, 1981, was [owned by a person other than an independent producer] *owned by any person (other than the producer) who at such times was not an independent producer* (within the meaning of section 4992(b)(1)).

Subchapter C—Miscellaneous Provisions

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SEC. 4995. WITHHOLDING; DEPOSITARY REQUIREMENTS.

(a) WITHHOLDING BY PURCHASER.—

(1) WITHHOLDING REQUIRED.—Except to the extent provided in regulations prescribed by the Secretary—

(A) the first purchaser of any domestic crude oil shall withhold a tax equal to the amount of the tax imposed by section 4986 with respect to such oil from amounts payable by such purchaser to the producer of such oil, and

(B) the first purchaser of such oil shall be liable for the payment of the tax required to be withheld under subparagraph (A) and shall not be liable to any person for the amount of any such payment.

(2) DETERMINATION OF AMOUNT TO BE WITHHELD.—

(A) IN GENERAL.—The purchaser shall determine the amount to be withheld under paragraph (1)—

(i) on the basis of the certification furnished to the purchaser under section 6050C, unless the purchaser has reason to believe that any information contained in such certification is not correct, or

(ii) if clause (i) does not apply, under regulations prescribed by the Secretary.

(B) NET INCOME LIMITATION NOT TO BE APPLIED.—For purposes of determining the amount to be withheld under paragraph (1), subsection (b) of section 4988 shall not apply.

(3) ADJUSTMENTS FOR WITHHOLDING ERRORS.—

(A) In general.—To the extent provided in regulations prescribed by the Secretary, withholding errors made by a purchaser with respect to the crude oil of a producer [removed during any calendar year] shall be corrected by that purchaser by making proper adjustments in the amounts withheld from subsequent payments to such producer for crude oil [removed during the same calendar year].

(B) Withholding error.—For purposes of subparagraph (A), there is a withholding error if the amount withheld by the purchaser under paragraph (1) with respect to any payment for any crude oil exceeds (or is less than) the tax imposed by section 4986 with respect to such oil (determined without regard to section 4988(b)).

[(C) Limitation on amount of adjustments.—No adjustment shall be required under subparagraph (A) with respect to any payment for any crude oil to the extent that such adjustment would result in amounts withheld from such payment in excess of the windfall profit from such crude oil.]

[(D)] *(C)* Voluntary withholding.—The Secretary may by regulations provide for withholding under this subsection of additional amounts from payments by any purchaser to any producer if the purchaser and producer agree to such withholding. For purposes of this title, any amount withheld pursuant to such an agreement shall be treated as an amount required to be withheld under paragraph (1).

(4) Producer treated as having paid withheld amount.—

(A) In general.—The producer of any domestic crude oil shall be treated as having paid any amount withheld with respect to such oil under this subsection.

(B) Time payment deemed made.—[The producer] *For purposes of this chapter (and so much of subtitle F as relates to this chapter), the producer* shall be treated as having made any payment described in subparagraph (A) on the last day of the first February after the calendar year in which the oil is removed from the premises.

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SEC. 4996. OTHER DEFINITIONS AND SPECIAL RULES.

(a) Producer and Operator.—For purposes of this chapter—

(1) Producer.—

(A) In general.—Except as provided in [subparagraph, (B)] *subparagraphs (B) and (C),* the term "producer" means the holder of the economic interest with respect to the crude oil.

(B) Net profits interests.—Except to the extent otherwise provided by regulations, in the case of any property, all cost recovery oil covered by a net profits agreement (within the meaning of subsection (h)) shall be treated as produced by the parties to such agreement in proportion to their respective shares (determined after reduction for such

cost recovery oil) of the production of the crude oil covered by such agreement.

[(B)] *(C)* PARTNERSHIPS.—

(i) IN GENERAL.—If (but for this subparagraph) a partnership would be treated as the producer of any crude oil—

(I) such crude oil shall be allocated among the partners of such partnership, and

(II) any partner to whom such crude oil is allocated (and not the partnership shall be treated as the producer of such crude oil.

(ii) ALLOCATION.—Except to the extent otherwise provided in regulations, any allocation under clause (i)(I) shall be determined on the basis of a person's proportionate share of the income of the partnership.

(2) OPERATOR.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "operator" means the person primarily responsible for the management and operation of crude oil production on a property.

(B) DESIGNATION OF OTHER PERSON.—Under regulations prescribed by the Secretary, the term "operator" means the person (or persons) designated with respect to a property (or portion thereof) as the operator for purposes of this chapter by persons holding operating mineral interests in the property.

(b) OTHER DEFINITIONS.—For purposes of this chapter—

(1) CRUDE OIL.—The term "crude oil" has the meaning given to such term by the June 1979 energy regulations. *In the case of crude oil which is condensate recovered off the premises by mechanical separation, such crude oil shall be treated as removed from the premises on the date on which it is so recovered.*

(2) BARREL.—The term "barrel" means 42 United States gallons.

(3) DOMESTIC.—The term "domestic," when used with respect to crude oil, means crude oil produced from [an oil] *a* well located in the United States or in a possession of the United States.

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(h) TERMS USED IN SUBSECTION (a)(1)(B).—For purposes of subsection (a)(1)(B) and this subsection—

(1) NET PROFITS AGREEMENT.—The term "net profits agreement" means an agreement entered into (or renewed) after March 31, 1982, and providing for sharing part or all of the production of crude oil from a property where—

(A) 1 or more persons are to be reimbursed for qualified costs by the allocation of cost recovery oil, and

(B) 1 or more persons are to receive a share of any production of crude oil from the property remaining after reduction for the cost recovery oil referred to in subparagraph (A).

(2) COST RECOVERY OIL DEFINED.—The term "cost recovery oil" means crude oil produced from the property which is allocated to a person as reimbursement for qualified costs paid or incurred with respect to the property.

(3) QUALIFIED COSTS.—The term "qualified costs" means any amount paid or incurred for exploring for, or developing or producing, 1 or more oil or gas wells on the property.

(4) SCOPE OF AGREEMENT.—A net profits agreement shall be treated as covering only shares of production of crude oil held by persons who hold economic interests in the property (determined without regard to subsection (a)(1)(B)).

[(h)] *(i)* CROSS REFERENCE.—

For the holder of the economic interest in the case of a production payment, see section 636.

SEC. 4997. RECORDS AND INFORMATION; REGULATIONS.

(a) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 4986, each partnership, trust, or estate producing domestic crude oil, each purchaser of domestic crude oil, and each operator of a well from which domestic crude oil was produced, shall keep such records, make such returns, and furnish such [information] *statements and other information* (to the Secretary and to other persons having an interest in the oil) with respect to such oil as the Secretary may by regulations prescribe.

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CHAPTER 52—CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

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Subchapter F—Penalties and Forfeitures

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SEC. 5761. CIVIL PENALTIES.

(a) OMITTING THINGS REQUIRED OR DOING THINGS FORBIDDEN.—Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall, in addition to any other penalty provided in this title, be liable to a penalty of $1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or under section 6651 or 6653 may be collected from such person by assessment.

(b) FAILURE TO PAY TAX.—Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) APPLICABILITY OF SECTION [6659] *6660.*—The penalty imposed by subsection (b) shall be assessed, collected, and paid in the same manner as taxes, as provided in section [6659] *6660*(a).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART II—TAX RETURNS OR STATEMENTS

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Subpart B—Income Tax Returns

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SEC. 6015. DECLARATION OF ESTIMATED INCOME TAX BY INDIVIDUALS.

(a) REQUIREMENT OF DECLARATION.—Except as otherwise provided in this section, every individual shall make a declaration of his estimated tax for the taxable year if—

(1) the gross income for the taxable year can reasonably be expected to exceed—

(A) $20,000, in the case of—

(i) a single individual, including a head of a household (as defined in section 2(b)) or a surviving spouse (as defined in section2(a)); or

(ii) a married individual entitled under subsection [b] *(c)* to file a joint declaration with his spouse, but only if his spouse has not received wages (as defined in section 3401(a)) for the taxable year; or

(B) $10,000, in the case of a married individual entitled under subsection [b] *(c)* to file a joint declaration with his spouse, but only if both he and his spouse have received wages (as defined in section 3401(a)) for the taxable year; or

(C) $5,000, in the case of a married individual not entitled under subsection [b] (*c*) to file a joint declaration with his spouse; or

(2) the gross income can reasonably be expected to include more than $500 from sources other than wages (as defined in section 3401(a)).

* * * * * * *

(d) ESTIMATED TAX.— For purposes of this title, in the case of an individual, the term "estimated tax" means—

(1) the amount which the individual estimates as the amount to the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 55 or 56), plus

(2) the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

[(3) the amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.]

(3) the amount which the individual estimates as the sum of—

(A) any credits against tax provided by part IV of subchapter A of chapter 1, and

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986.

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Subpart B—Information Concerning Transactions With Other Persons

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SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY AND BOND PURCHASE PLANS.

(a) TRUSTEES AND INSURANCE COMPANIES.—* * *

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(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary, the provisions of this section apply with respect to any payment described in section 219[a] and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

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SEC. 6154. INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY CORPORATIONS.

(a) CORPORATIONS REQUIRED TO PAY ESTIMATED INCOME TAX.—* * *

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(c) ESTIMATED TAX DEFINED.—For purposes of this title, in the case of a corporation the term "estimated tax" means the excess of—

(1) the amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

[(2) the amount which the corporation estimates as the sum of the credits against tax provided by part IV of subchapter A of chapter 1.]

(2) the amount which the corporation estimates as the sum of—

(A) any credits against tax provided by part IV of subchapter A of chapter 1, and

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986.

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Subchapter B—Extensions of Time for Payment

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SEC. 6166. EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS.

(a) 5-YEAR DEFERRAL; 10-YEAR INSTALLMENT PAYMENT.—* * *

* * * * * * *

(b) DEFINITIONS AND SPECIAL RULES.—

(1) INTEREST IN CLOSELY HELD BUSINESS.—For purposes of this section, the term "interest in a closely held business" means—

(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

(B) an interest as a partner in a partnership carrying on a trade or business, if—

(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(ii) such partnership had 15 or fewer partners; or

(C) stock in a corporation carrying on a trade or business if—

(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(ii) such corporation had 15 or fewer shareholders.

(2) RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

(A) TIME FOR TESTING.—Determinations shall be made as of the time immediately before the decedent's death.

(B) CERTAIN INTERESTS HELD BY HUSBAND AND WIFE.—Stock or a partnership interest which—

(i) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

(ii) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by one shareholder or one partner, as the case may be.

(C) INDIRECT OWNERSHIP.—Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence, a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

(D) CERTAIN INTERESTS HELD BY MEMBERS OF DECEDENTS FAMILY.—All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent.

(3) FARMHOUSES AND CERTAIN OTHER STRUCTURES TAKEN INTO ACCOUNT.—For purposes of the [65-percent] *35-percent* requirement of subsection (a)(1), an interest in a closely held business which is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by such owner or lessee for purposes of operating or maintaining the farm.

* * * * * * *

(g) ACCELERATION OF PAYMENT.—

(1) DISPOSITION OF INTEREST; WITHDRAWAL OF FUNDS FROM BUSINESS.—

(A) If—

(i)(I) any portion of an interest in a closely held business which qualifies under subsection (a)(1) is distributed, sold, exchanged, or otherwise disposed of, or

(II) money and other property attributable to such an interest is withdrawn from such trade or business, and

(ii) the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of such interest,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

[(i) subparagraph (A)(i) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed, and

[(ii) subparagraph (A)(ii) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.]

(i) the redemption of such stock, and the withdrawal of money and other property distributed in such redemption, shall not be treated as a distribution or withdrawal for purposes of subparagraph (A), and

(ii) for purposes of subparagraph (A), the value of the interest in the closely held business shall be considered

to be such value reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (a)(3) for the payment of the first installment which becomes due after the date of the distribution (or, if earlier, on or before the day which is 1 year after the date of the distribution), there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

* * * * * * *

(j) Cross References.—

(1) Security.—For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

(2) Lien.—For special lien (in lieu of bond) in the case of an extension under this section, see section 6324A.

(3) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

(4) Interest.—For provisions relating to interest on tax payable in installments under this section, see subsection (j) of section 6601.

(5) Transfers within 3 years of death.—For special rule for qualifying an estate under this section where property has been transferred within 3 years of decedent's death, see section 2035(d)(4).

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Subchapter B—Rules of Special Application

* * * * * * *

SEC. 6428. 1981 RATE REDUCTION TAX CREDIT.

(a) Allowance of Credit.—There shall be allowed as a credit against the tax imposed by section 1, or against a tax imposed in lieu of the tax imposed by section 1, for any taxable year beginning in 1981, an amount equal to the product of—

(1) 1.25 percent, multiplied by

(2) the amount of tax imposed by section 1 (or in lieu thereof) for such taxable year.

(b) Special Rules for Application of This Section.—

(1) Application with other credits.—In determining any credit allowed under subpart A of part IV of subchapter A of chapter 1 (other than under sections 31, 39, and 43), the tax imposed by chapter 1 shall (before any other reductions) be reduced by the credit allowed under subsection (a).

(2) Credit treated as subpart A credit.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart A of part IV of subchapter A of chapter 1.

(c) Tables To Reflect Credit.—

(1) Section 3 tables.—The tables prescribed by the Secretary under section 3 shall reflect the credit allowed under subsection (a).

(2) Other tables.—In order to reflect the amount of the credit under subsection (a) for different levels of tax or taxable income, the Secretary may—

(A) modify the tables under section 1, or

(B) prescribe such other tables as he determines necessary.

(d) SPECIAL RULES.—For purposes of this section—

(1) INDIVIDUALS TO WHOM 50 PERCENT MAXIMUM RATE OR 20 PERCENT CAPITAL GAIN RATE APPLIES.—

(A) IN GENERAL.—In the case of any individual to whom this paragraph applies, in determining the amount of the credit allowable under subsection (a)—

(i) the portion of the tax imposed by section 1 determined under section 1348(a)(2) (as in effect before its repeal by the Economic Recovery Tax Act of 1981), and

(ii) the portion of the tax imposed by section 1 determined under subsection (a)(2)(B) of section 102 of the Economic Recovery Tax Act of 1981,

shall not be taken into account.

(B) INDIVIDUALS TO WHOM PARAGRAPH APPLIES.—This paragraph applies to any individual if the tax imposed by section 1 for the taxable year is determined under—

(i) section 1348 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), or

(ii) section 102(a)(2) of the Economic Recovery Tax Act of 1981.

(2) SPECIAL RULE FOR TAX IMPOSED BY SECTION 402(e).—The tax imposed by subsection (e) of section 402 shall be treated as a tax imposed by section 1.

SEC. 6429. CREDIT AND REFUND OF CHAPTER 45 TAXES PAID BY ROYALTY OWNERS.

(a) TREATMENT AS OVERPAYMENT.—* * *

* * * * * * *

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED ROYALTY OWNER.—The term "qualified royalty owner" means a producer (within the meaning of section 4996(a)(1)), but only if such producer is an individual, an estate, or a qualified family farm corporation.

(2) QUALIFIED ROYALTY PRODUCTION.—The term "qualified royalty production" means, with respect to any qualified royalty owner, taxable crude oil which is attributable to an economic interest of such royalty owner other than an operating mineral interest (within the meaning of section 614(d)). Such term does not include taxable crude oil attributable to any overriding royalty interest, production payment, net profits interest, or similar interest of the qualified royalty owner which—

(A) is created after June 9, 1981, out of an operating mineral interest in property which is proven oil or gas property (within the meaning of section 613A(c)(9)(A)) on the date such interest is created, and

(B) is not created pursuant to a binding contract entered into prior to June 10, 1981.

(3) PRODUCTION FROM TRANSFERRED PROPERTY.—

(A) IN GENERAL.—In the case of a transfer of an interest in any property, the qualified royalty production of the transferee shall not include any production attributable to an interest that has been transferred after June 9, 1981, in a transfer which—

(i) is described in section 613A(c)(9)(A), and

(ii) is not described in section 613A(c)(9)(B).

(B) Exceptions.—Subparagraph (A) shall not apply in the case of any transfer so long as the transferor and the transferee are required by paragraph (3) or (4) of subsection (c) to share the $2,500 amount in subsection (c)(1). The preceding sentence shall apply to the case of any property only if the production from the property was qualified royalty production of the transferor.

(C) Transfers include subleases.—For purposes of this paragraph, a sublease shall be treated as a transfer.

[(D) Estates.—For purposes of this paragraph, property held by any estate shall be treated as owned both by such estate and proportionately by the beneficiaries of such estate.]

(4) Qualified family farm corporation.—The term "qualified family farm corporation" means a corporation—

(A) all the outstanding shares of stock of which at all times during the calendar year are held by members of the same family (within the meaning of section 203A(e)(2)), and

(B) 80 percent in value of the assets of which ([other than royalty interest described in paragraph (2)(A)] *other than royalty interests from which there is qualified royalty production determined by treating such corporation as a qualified royalty owner*) are held by the corporation at all times during such calendar year for use for farming purposes (within the meaning of section 2032A(e)(5)).

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) Returns Relating to Information at Source Payments of Dividends, Etc., and Certain Transfers of Stock.—In the case of each failure—

(1) to file a statement of the aggregate amount of payments to another person required by—

(A) section 6041 (a) or (b) (relating to certain information at source),

(B) section 6042(a)(1) (relating to payments of dividends aggregating $10 or more),

(C) section 6044(a)(1) (relating to payments of patronage dividends aggregating $10 or more),

(D) section 6049(a)(1) (relating to payments of interest aggregating $10 or more),

(E) section 6050A(a) (relating to reporting requirements of certain fishing boat operators), or

(F) section 6051(d) (relating to information returns with respect to income tax withheld), [or]

(2) to make a return required by section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance) with respect to group-term life insurance on the life of an employee, *or*

(3) to make a return required by section 4997(a) (relating to information with respect to windfall profit tax on crude oil),

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax), by the person failing to file a statement referred to in paragraph (1) or failing to make a return referred to in paragraph (2) *or (3),* $10 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000.

* * * * * * *

SEC. 6653. FAILURE TO PAY TAX.

(a) Negligence or Intentional Disregard of Rules and Regulations With Respect to Income, Gift, or Windfall Profit Taxes.—

(1) In general.—If any part of any underpayment (as defined in subsection (c)(1)) of any tax imposed by subtitle A, by chapter 12 of subtitle B or by chapter 45 (relating to windfall profit tax) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(2) Additional amount for portion attributable to negligence, etc.—There shall be added to the tax (in addition to the amount determined under paragraph (1)) an amount equal to 50 percent of the interest payable under section 6601—

(A) with respect to the portion of the underpayment described in paragraph (1) which is attributable to the negligence or intentional disregard referred to in paragraph (1), and

(B) for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax *(or, if earlier, the date of the payment of the tax).*

* * * * * * *

[(g)] *(f)* Special Rule in Cases of Failure To Report [Unrealized] *Unrecognized* Gain on Position in Personal Property.—If—

(1) a taxpayer fails to make the report required under section 1092(a)(3)(B) in the manner prescribed by such section and such failure is not due to reasonable cause, and

(2) such taxpayer has an underpayment of any tax attributable (in whole or in part) to the denial of a deduction of a loss with respect to any position (within the meaning of section 1092(d)(2)),

then such underpayment shall, for purposes of subsection (a), be treated as an underpayment due to negligence or intentional disregard of rules and regulations (but without intent to defraud).

SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) ADDITION TO THE TAX.— * * *

* * * * * * *

(f) EXCEPTION WHERE TAX IS SMALL AMOUNT.—

(1) IN GENERAL.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), *reduced by the credit allowable under section 31,* is less than the amount determined under the following table:

In the case of taxable years beginning in:	The amount is:
1981	$100
1982	200
1983	300
1984	400
1985 and thereafter	500

(2) SPECIAL RULE.—For purposes of subsection (b), the amount of any installment required to be paid shall be determined without regard to subsection (b) of section 6015.

(g) TAX COMPUTED AFTER APPLICATION OF CREDITS AGAINST TAX.—For purposes of subsections (b), (d), and (f) the term "tax" means—

(1) the tax imposed by this chapter 1 (other than by section 55 or 56), plus

(2) the tax imposed by chapter 2, minus

(3) the sum of—

(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages), plus

[(B) to the extent allowed under regulations prescribed by the Secretary, any amount which is treated under section 6429 as an overpayment of the tax imposed by section 4986.]

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

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SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

(a) ADDITION TO THE TAX.—* * *

* * * * * * *

(e) DEFINITION OF TAX.—For purposes of subsections (b), (d), and (h), the term "tax" means the excess of—

(1) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) the sum of—

(A) the credits against tax provided by part IV of subchapter A of chapter 1, plus

[(B) to the extent allowed under regulations prescribed by the Secretary, any amount which is treated under section 6429 as an overpayment of the tax imposed by section 4986.]

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

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SEC. 6656. FAILURE TO MAKE DEPOSIT OF TAXES OR OVERSTATEMENT OF DEPOSITS.

(a) UNDERPAYMENT OF DEPOSITS.—* * *

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(b) OVERSTATED DEPOSIT CLAIMS.—

(1) IMPOSITION OF PENALTY.—Any person who makes an overstated deposit claim shall be subject to a penalty equal to 25 percent of such claim.

(2) OVERSTATED DEPOSIT CLAIM DEFINED.—For purposes of this subsection, the term "overstated deposit claim" means the excess of—

(A) the amont of tax under this title which any person claims, in a return filed with the Secretary, that such person has deposited in a government depositary under section 6302(c) for any period, over

(B) the aggregate amount such person has deposited in a government depositary under section 6302(c), for such period, on or before [the date such return is filed.] *the due date for filing such return.*

(3) PENALTY NOT IMPOSED IN CERTAIN CASES.—The penalty under paragraph (1) shall not apply if it is shown that the excess described in paragraph (2) is due to reasonable cause and not due to willful neglect.

(4) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty under paragraph (1) shall be in addition to any other penalty provided by law.

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SEC. 6659. ADDITION TO TAX IN THE CASE OF VALUATION OVERSTATEMENTS FOR PURPOSES OF THE INCOME TAX.

(a) ADDITION TO THE TAX.—* * *

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(c) Valuation Overstatement Defined.—

(1) In general.—For purposes of this section, there is a valuation overstatement if the value of any property, or the adjusted basis of any property, claimed on any return [exceeds 150 percent of] *is 150 percent or more of* the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

(2) Property must have been acquired within last 5 years.—This section shall not apply to any property which, as of the close of the taxable year for which there is a valuation overstatement, has been held by the taxpayer for more than 5 years.

(d) Underpayment Must Be at Least $1,000.—This section shall not apply if the underpayment for the taxable year attributable to [the valuation overstatement] *valuation overstatements* is less than $1,000.

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Subchapter B—Assessable Penalties

* * * * * * *

SEC. 6678. FAILURE TO FURNISH CERTAIN STATEMENTS.

In the case of each failure—

(1) to furnish a statement under section 6041(d), 6042(c), 6044(e), 6049(c), or 6052(b), on the date prescribed therefor to a person with respect to whom a return has been made under section 6041(a), 6042(a)(1), 6044(a)(1), 6049(a)(1), or 6052(a), respectively,

(2) to furnish a statement under section 6039(a) on the date prescribed therefor to a person with respect to whom such a statement is required, or

(3) to furnish a statement under—

(A) section 4997(a) (relating to statements with respect to windfall profit tax on crude oil),

[(A)] *(B)* section 6050A(b) (relating to statements furnished by certain fishing boat operators),

[(B)] *(C)* section 6050C (relating to information regarding windfall profit tax on crude oil),

[(C)] *(D)* section 6051 (relating to information returns with respect to income tax withheld) if the statement is required to be furnished to the employee, or

[(D)] *(E)* section 6053(b) (relating to statements furnished by employers with respect to tips),

on the date prescribed therefor to a person with respect to whom such a statement is required,

unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to so furnish the statement $10 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000.

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SEC. 6699. ASSESSABLE PENALTIES RELATING TO TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.

(a) In General.—* * *

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(c) Amount Involved Defined.—

(1) In general.—For purposes of this section, the term "amount involved" means an amount determined by the Secretary.

(2) Maximum and minimum amount.—

(A) The amount determined under paragraph (1) with respect to a failure described in paragraph (1) or (2) of subsection (a)—

(i) shall not exceed the amount of the employee plan credit claimed by the employer to which such failure relates, and

(ii) shall not be less than the product of one-half of 1 percent of the amount referred to in **[**subparagraph (A)**]** *clause (i),* multiplied by the number of months (or parts thereof) during which such failure continues.

(B) The amount determined under paragraph (1) with respect to a failure described in paragraph (3) or (4) of subsection (a)—

(i) shall not exceed the amount of the credit claimed by the employer under section 44G to which such failure relates, and

(ii) shall not be less than the product of one-half of 1 percent of the amount referred to in **[**subparagraph (A)**]** *clause (i),* multiplied by the number of months (or parts thereof) during which such failure continues.

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ECONOMIC RECOVERY TAX ACT OF 1981

* * * * * * *

TITLE I—INDIVIDUAL INCOME TAX PROVISIONS

Subtitle A—Tax Reductions

SEC. 101. RATE CUTS; RATE REDUCTION CREDIT.

(a) * * *

* * * * * * *

(f) Effective Dates.—

(1) In general.—The amendments made by subsections (a), (c), and (d) shall apply to taxable years beginning after Decem-

ber 31, 1981; *except that the amendment made by paragraph (3) of subsection (d) shall apply to taxable years ending after December 31, 1981.*

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Subtitle C—Miscellaneous Provisions

* * * * * * *

SEC. 122. 18-MONTH PERIODS FOR ROLLOVER OF PRINCIPAL RESIDENCE INCREASED TO 2 YEARS.

(a) In General.—Section 1034 (relating to rollover of gain on sale of principal residence) is amended by striking out "18 months" each place it appears and inserting in lieu there of "2 years".

(b) Conforming Amendments.—

(1) Paragraph (4) of section 1034(c) is amended by striking out "18-month" and inserting in lieu thereof "2-year".

(2) Paragraph (5) of section 1034(c) is hereby repealed.

(c) Effective Date.—The amendments made by this section shall apply to old residences (within the meaning of section 1034 of the Internal Revenue Code of 1954) sold or exchanged—

(1) after July 20, 1981, or

(2) on or before such date, if the rollover period under such section (determined without regard to the amendments made by this section) expires on or after such date.

Notwithstanding the preceding sentence, the taxpayer may elect to have the amendments made by this section not apply to any old residence sold or exchanged on or before August 13, 1981. Such an election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

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TITLE II—BUSINESS INCENTIVE PROVISIONS

Subtitle A—Cost Recovery Provisions

* * * * * * *

SEC. 207. EXTENSION OF CARRYOVER PERIOD FOR NET OPERATING LOSSES AND CERTAIN CREDITS.

(a) * * *

* * * * * * *

(c) Carryover of Tax Credits.—

(1) Investment credit and win credit.—Paragraph (1) of section 46(b) (relating to carryback and carryovers of unused investment credits) and paragraph (1) of section 50A(b) (relating to carryback and carryover of unused work incentive program credit) are each amended by adding at the end thereof the following new sentence: "In the case of an unused credit for an unused credit year ending after December 31, 1973, this

paragraph shall be applied by substituting '15' for '7' in subparagraph (B), and by substituting '18' for '10', and '17' for '9' in the second sentence."

(2) NEW EMPLOYEE CREDIT.—Paragraph (1) of [section 53(c)] *section 53(b)* (relating to carrybacks and carryovers of new employee credit) is amended—

(A) by striking out "7" in subparagraph (B) and inserting in lieu thereof "15",

(B) by striking out "10" and inserting in lieu thereof "18", and

(C) by striking out "9" and inserting in lieu thereof "17".

* * * * * * *

SEC. 209. EFFECTIVE DATES.

(a) * * *

* * * * * * *

(c) SPECIAL RULE FOR CARRYOVERS.—

(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 shall apply to net operating losses in taxable years ending after December 31, 1975.

(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96-595; except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act and as modified by section 1(b) of Public Law 96-595), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

(2)(A) The amendments made by subsection (c)(1) of section 207 shall apply to unused credit years ending after December 31, 1973.

(B) The amendment made by subsection (c)(2) of section 207 shall apply to unused credit years beginning after December 31, 1976.

(C) The amendments made by such subsection (c)(3) of section 207 shall apply to unused credit years ending after September 30, 1980.

(3) CARRYOVER MUST HAVE BEEN ALIVE IN 1981.—The amendments made by subsections (a), (b), and (c) of section 207 shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act, could not be carried to a taxable year ending in 1981.

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Subtitle B—Investment Tax Credit Provisions

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SEC. 212. INCREASE IN INVESTMENT TAX CREDIT FOR QUALIFIED REHABILITATION EXPENDITURES.

(a) * * *

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(e) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

(2) Transitional rule.—The amendments made by this section shall not apply with respect to any rehabilitation of a building if—

(A) the physical work on such rehabilitation began before January 1, 1982, and

[(B) such building meets the requirements of paragraph (1) of section 48(g) of the Internal Revenue Code of 1954 (as in effect on the day before the date of enactment of this Act) but does not meet the requirements of such paragraph (1) (as amended by this Act).]

(B) such building does not meet the requirements of paragraph (1) of section 48(g) of the Internal Revenue Code of 1954 (as amended by this Act).

SEC. 213. INVESTMENT CREDIT FOR USED PROPERTY; INCREASE IN DOLLAR LIMIT.

(a) In General.—Paragraph (2) of section 48(c) (relating to used section 38 property) is amended by amending subparagraphs (A), (B), and (C) to read as follows:

"(2) Dollar limitation.—

"(A) In general.—The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed $150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984). If such cost exceeds $150,000 (or $125,000 as the case may be), the taxpayer shall select (at such time and in such manner as the Secretary shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of $150,000 (or $125,000). Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

"(B) Married individuals.—In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be $75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984). This subparagraph shall not apply if the spouse of the taxpayer has no used section 38 property which may be taken into account as qualified investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

"(C) Controlled groups.—In the case of a controlled group, the amount specified under subparagraph (A) shall be reduced for each component member of the group by apportioning such amount among the component members of such group in accordance with their respective amounts of used section 38 property which may be taken into account."

(b) Effective Date.—The amendment made by this section shall apply to [property placed in service] *taxable years beginning* after December 31, 1980.

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Subtitle F—Stock Options, Etc.

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SEC. 252. PROPERTY TRANSFERRED TO EMPLOYEES SUBJECT TO CERTAIN RESTRICTIONS.

(a) * * *

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(c) Effective Date.—The amendment made by subsection (a) and the provisions of subsection (b) shall apply to [taxable years ending after December 31, 1981] *transfers after December 31, 1981.*

Subtitle G—Miscellaneous Provisions

SEC. 261. ADJUSTMENTS TO NEW JOBS CREDIT.

(a) * * *

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(g) Effective Dates.—

(1) Amendments relating to members of targeted groups.—

(A) In general.—Except as provided in subparagraphs (B), (C), and (D), the amendments made by subsections (b), (c)(2), and (d) shall apply to wages paid or incurred with respect to individuals first beginning work for an employer after the date of the enactment of this Act in taxable years ending after such date.

(B) Eligible work incentive employees.—The amendments made by [subsection (b)(2)(A)] *subsection (b)(2)* to the extent relating to the designation of eligible work incentive employees (within the meaning of section 51(d)(9) of the Internal Revenue Code of 1954) as members of a targeted group and subsection (b)(2)(B)(ii) shall apply to taxable years beginning after December 31, 1981. In the case of an eligible work incentive employee, subsections (a) and (b) of section 51 of such Code shall be applied for taxable years beginning after December 31, 1981, as if such employees had been members of a targeted group for taxable years beginning before January 1, 1982.

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SEC. 266. DEDUCTION FOR MOTOR CARRIER OPERATING AUTHORITY.

(a) * * *

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(c) SPECIAL RULES.—

(1) ADJUSTED BASIS.—For purposes of the Internal Revenue Code of 1954, proper adjustments shall be made in the adjusted basis of any motor carrier operating authority held by the taxpayer on July 1, 1980, for the amounts allowable as a deduction under this section.

(2) CERTAIN STOCK ACQUISITIONS.—

(A) IN GENERAL.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which a corporation—

(i) on or before July 1, 1980 (or after such date pursuant to a binding contract in effect on such date), acquired stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

(ii) would have been able to allocate to the basis of such authority that portion of the acquiring corporation's cost basis in such stock attributable to such authority if the acquiring corporation had received such authority in the liquidation of the acquired corporation immediately following such acquisition and such allocation would have been proper under section 334(b)(2) of such Code,

the holder of the authority may, for purposes of this section, allocate a portion of the basis of the acquiring corporation in the stock of the acquired corporation to the basis of such authority in such manner as the Secretary may prescribe in such regulations.

(B) ADJUSTMENT TO BASIS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, proper adjustment shall be made to the basis of the stock or other assets in the manner provided by such regulations to take into account any allocation under subparagraph (A).

(3) SECTION 381 OF THE INTERNAL REVENUE CODE OF 1954 TO APPLY.—For purposes of section 381 of the Internal Revenue Code of 1954, any item described in this section shall be treated as an item described in subsection (c) of such section 381.

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TITLE III—SAVINGS PROVISIONS

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Subtitle B—Retirement Savings Provisions

SEC. 311. RETIREMENT SAVINGS.

(a) * * *

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(c) Unrealized Appreciation of Employer Securities.—

(1) Paragraph (1) of section 402(a) (relating to taxability of beneficiary of exempt trust) is amended by striking out in the second sentence thereof "by the employee" and inserting in lieu thereof "by the employee (other than deductible employee contributions within the meaning of section 72(o)(5))."

[(2) Subparagraph (J) of section 402(e) (relating to tax on lump sum distribution) is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply to distributions of accumulated deductible employee contributions (within the meaning of section 77(o)(5))."]

(2) Subparagraph (J) of section 402(e)(4) (relating to tax on lump sum distribution) is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply to distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5))."

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(i) Effective Dates.—

(1) In general.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1981.

(2) Transitional rule.—For purposes of the Internal Revenue Code of 1954, any amount allowed as a deduction under section 220 of such Code (as in effect before its repeal by this Act) shall be treated as if it were allowed by section 219 of such Code.

(3) Certain bond rollover provisions.—The amendment made by subsection (g)(3) shall apply to taxable years beginning after December 31, 1974.

(4) Section 415 amendments.—The amendments by subsections (g)(4) and (h)(3) shall apply to years after December 31, 1981.

(5) Estate and gift tax provisions.—

(A) Estate tax.—The amendments made by subsections (d)(1) and (h)(4) shall apply to the estates of decedents dying after December 31, 1981.

(B) Gift tax.—The amendments made by subsections (d)(2) and (h)(5) shall apply to transfers after December 31, 1981.

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SEC. 312. INCREASE IN AMOUNT OF SELF-EMPLOYED RETIREMENT PLAN DEDUCTION

(a) * * *

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(f) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to **[**plans which include employees within the meaning of section 401(c)(1) with respect to**]** taxable years beginning after December 31, 1981.

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SEC. 314. MISCELLANEOUS PROVISIONS.

(a) Removal of Five-Year Ban on Contributions to Owner-Employee Plans Where Plan Terminates.—

(1) In general.—Paragraph (5) of section 401(d) (relating to additional requirements for qualifications of trusts and plans benefiting owner-employees) is amended by adding at the end thereof the following: "Subparagraph (C) shall not apply to a distribution on account of the termination of the plan."

(2) Effective date.—The amendment made by paragraph (1) shall apply to distributions after December 31, 1980, in taxable years beginning after such date.

(b) Investment by Individual Retirement Accounts, Etc., in Collectibles Treated as Distributions.—

(1) In general.—Section 408 (relating to individual retirement accounts) is amended **[**by redesignating subsection (n) as subsection (o) and by inserting after subsection (m)**]** *by redesignating subsection (m) as subsection (n) and by inserting after subsection (l)* the following new subsection:

"(n) Investment in Collectibles Treated as Distribution.—

"(1) In general.—The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

"(2) Collectible defined.—For purposes of this subsection, the term 'collectible' means—

"(A) any work of art,
"(B) any rug or antique,
"(C) any metal or gem,
"(D) any stamp or coin,
"(E) any alcoholic beverage, or
"(F) any other tangible personal property specified by the Secretary for purposes of this subsection."

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Subtitle D—Employee Stock Ownership Provisions

SEC. 331. PAYROLL-BASED CREDIT FOR ESTABLISHING EMPLOYEE STOCK OWNERSHIP PLAN.

(a) * * *

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(c) CONFORMING AMENDMENTS.—

(1) * * *

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(4) Paragraph (2) of section [6699] *6699(c)* is amended to read as follows: "(2) MAXIMUM AND MINIMUM AMOUNT.—

"(A) The amount determined under paragraph (1) with respect to a failure described in paragraph (1) or (2) of subsection (a)—

"(i) shall not exceed the amount of the employee plan credit claimed by the employer to which such failure relates, and

"(ii) shall not be less than the product of one-half of 1 percent of the amount referred to in subparagraph (A), multiplied by the number of months (or parts thereof) during which such failure continues.

"(B) The amount determined under paragraph (1) with respect to a failure described in paragraph (3) or (4) of subsection (a)—

"(i) shall not exceed the amount of the credit claimed by the employer under section 44G to which such failure relates, and

"(ii) shall not be less than the product of one-half of 1 percent of the amount referred to in subparagraph (A), multiplied by the number of months (or parts thereof) during which such failure continues."

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TITLE IV—ESTATE AND GIFT TAX PROVISIONS

Subtitle A—Increase in Unified Credit; Rate Reduction; Unlimited Marital Deduction

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SEC. 403. UNLIMITED MARITAL DEDUCTION.

(a) * * *

* * * * * * *

(d) ELECTION TO HAVE CERTAIN LIFE INTERESTS QUALIFY FOR MARITAL DEDUCTION.—

(1) * * *

* * * * * * *

(3) Treatment of spouse.—

(A) * * *

(B) Gift tax.—

(i) In general.—Subchapter B of chapter [11] *12* (relating to transfers) is amended by adding at the end thereof the following new section:

"SEC. 2519. DISPOSITIONS OF CERTAIN LIFE ESTATES.

"(a) General Rule.—Any disposition of all or part of a qulifying income interest for life in any property to which this section applies shall be treated as a transfer of such property.

"(b) Property To Which This Subsection Applies.—This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

"(1) under section 2056 by reason of subsection (b)(7) thereof, or

"(2) under section 2523 by reason of subsection (f) thereof."

(ii) The table of sections for subchapter B of chapter [11] *12* is amended by adding at the end thereof the following new item:

"Sec. 2519. Dispositions of certain life estates."

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Subtitle B—Other Estate Tax Provisions

SEC. 421. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

(a) * * *

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(k) Effective Dates.—

(1) * * *

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(5) Certain amendments made retroactive to 1976.—

(A) In general.—The amendments made by [subsections (b)(1), (c)(2), (j)(1), and (j)(2)] *subsections (b)(1), (j)(1), and (j)(2) and the provisions of subparagraph (A) of section 2032A(c)(7) of the Internal Revenue Code of 1954 (as added by subsection (c)(2))* shall apply with respect to the estates of decedents dying after December 31, 1976.

(B) Timely election required.—Subparagraph (A) shall only apply in the case of an estate if a timely election under section 2032A was made with respect to such estate. [If the time for making an election under section 2032A with respect to any estate would have otherwise expired after July 28, 1980, the time for making such election shall not expire before the date 6 months after the date of the enactment of this Act.] *If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1954 but for the amendments described in subpara-*

graph (A) and the time for making an election under section 2032A with respect to such estate would (but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act, such election may be reinstated [within 6 months after the date of the enactment of this Act.] *at any time before February 17, 1982.*

(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time [within 6 months after such date of enactment] *before February 17, 1982)* the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before [the date 6 months after such date of enactment] *February 17, 1982.*

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SEC. 509. ELECTION FOR EXTENSION OF TIME FOR PAYMENT AND APPLICATION OF SECTION 1256 FOR THE TAXABLE YEAR INCLUDING JUNE 23, 1981.

(a) * * *

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(b) FORM OF ELECTION.—An election under this section shall be made not later than the time for filing the return for the taxable year described in subsection (a)(1) and shall be made in the manner and form required by regulations prescribed by the Secretary. The election shall set forth—

(1) the amount determined under subsection (a)(3)(B) and the number of installments elected by the taxpayer,

(2) each regulated futures contract held by the taxpayer on the first day of the taxable year described in subsection (a)(1), and the date such contract was acquired,

[(3) the fair market value on the last business day of such taxable year for each regulated futures contract described in subparagraph (B), and]

(3) the fair market value on the last business day of the preceding taxable year for each regulated futures contract described in paragraph (2), and

* * * * * * *

SECTION 223 OF THE CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980

SEC. 223. OTHER CHANGES WITH RESPECT TO THE INVESTMENT CREDIT FOR INVESTMENT IN ENERGY PROPERTY.

(a) BOILERS FUELED BY PETROLEUM COKE OR PETROLEUM PITCH.—

(1) IN GENERAL.—[Paragraph (10)] *Subparagraph (A) of paragraph (10)* of section 48(a) (relating to boilers fueled by oil

or gas) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the term 'petroleum or petroleum products' does not include petroleum coke or petroleum pitch."

SECTION 2 OF PUBLIC LAW 96-603

AN ACT To amend the Internal Revenue Code of 1954 to simplify private foundation return and reporting requirements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 2. ALLOWANCE OF DEDUCTION FOR CERTAIN FOREIGN DEFERRED COMPENSATION PLANS.

(a) * * *

* * * * * * *

(e) **Effective Date.**—

(1) **In general.**—The amendments made by this section shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

(2) **Election to apply amendments retroactively with respect to foreign subsidiaries.**—

(A) **In general.**—The taxpayer may elect to have the amendments made by this section apply retroactively with respect to its foreign subsidiaries.

(B) **Scope of retroactive application.**—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

(C) **Distributions by foreign subsidiary must be out of post-1971 earnings and profits.**—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

(D) **Revocation only with consent.**—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

(E) **Open period.**—For purposes of this subsection, the term "open period" means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, **[**was barred**]** *was not barred* by any law or rule of law.

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